

MONDAY, APRIL 1, 1991

TWENTY-NINTH LEGISLATIVE DAY

The House met at 5:00 p.m. and was called to order by Mr. Speaker Naifeh.

The proceedings were opened with prayer by J. Walker Whittle, Red Walnut Church of Christ, Bath Springs, Tennessee.

Representative Page Walley led the House in the Pledge of Allegiance to the Flag.

ROLL CALL

The roll call was taken with the following results:

Present 91

Representatives present were: Allen, Anderson, Arriola, Bell, Bittle, Bivens, Bragg, Byrd, Callicott, Chiles, Chumney, Clark, Coffey, Collier, Copeland, Crain, Cross, Curlee, Davidson, Davis (Cocke), Davis (Gibson), Davis (Knox), DeBerry, Dixon, Duer, Ferguson, Fowlkes, Givens, Gunnels, Haley, Halteman, Hargrove, Harrill, Hassell, Haun, Head, Herron, Hill, Hillis, Holcomb, Holt, Hubbard, Huskey, Jackson, Johnson, Jones U (Shelby), Joyce, Kent, King, Kisber, Knight, Liles, McAfee, McDaniel, McKee, Meyer, Moore, Napier, Niceley, Odom, Peroulas Draper, Phillips, Pinion, Pruitt, Purcell, Rhinehart, Ridgeway, Rigsby, Rinks, Robinson (Davidson), Robinson (Hamilton), Robinson (Washington), Severance, Shirley, Sipes, Stamps, Tindell, Tullos, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Whitson, Williams (Shelby), Williams (Union), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 91.

EXCUSED

The Speaker announced that the following member(s) has/have been excused, pursuant to request(s) under Rule No. 20:

Representative Buck; due to a court case.

Representative Cole; due to out of town business.

Representative Garrett; due to personal business.

Representative Rufus Jones for Monday and Tuesday; due to business in district.

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CONSENT CALENDAR

***House Bill No. 0006** -- Highway Signs -- Bell Buckle. Amends TCA, Title 54, Ch. 5, Pt. 7.

House Bill No. 0207 -- Fees -- Allows county trustee to collect negotiated fee for collection of municipal taxes pursuant to functional consolidation agreement. Amends TCA 8-11-110.

On motion, House Bill No. 207 was made to conform with Senate Bill No. 28.

On motion, **Senate Bill No. 28**, on same subject, was substituted for House Bill No. 207.

House Bill No. 1405 -- State Employees -- Requires all state offices have bulletin board accessible by employees. Amends TCA 8-50-1001.

On motion, House Bill No. 1405 was made to conform with Senate Bill No. 1305.

On motion, **Senate Bill No. 1305**, on same subject, was substituted for House Bill No. 1405.

***House Bill No. 0151** -- Highway Signs -- Alvin C. York Homeplace, 1-40.

On motion, House Bill No. 151 was made to conform with Senate Bill No. 155.

On motion, **Senate Bill No. 155**, on same subject, was substituted for House Bill No. 151.

House Joint Resolution No. 0110 -- Highway Signs -- PFC Lattie Tipton, Bridge No. 86-36-13.01 in Erwin.

House Joint Resolution No. 0178 -- Memorials, Public Service -- Reading is Fundamental, Inc., 25th anniversary.

House Bill No. 1554 -- Moscow -- Repeals city charter; enacts new charter. Amends Chapter 309, Acts of 1901, as amended.

House Bill No. 1555 -- Robertson County -- Revises distribution procedures for wheel tax. Amends Chapter 265, Private Acts 1949, as amended.

House Bill No. 1556 -- Ardmore -- Removes certain residency requirements for city recorder. Amends Chapter 801, Private Acts of 1949, as amended.

Senate Joint Resolution No. 0160 -- Memorials, Sports -- Shelbyville High School girls' basketball team, State AAA champions.

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Pursuant to **Rule No. 50**, Rep. Phillips moved that all House Bills having companion Senate Bills on the Clerk's desk be conformed and substituted for the appropriate House Bill, that all Senate and House Bills on the Consent Calendar be passed on third and final consideration, all House Resolutions and House Joint Resolutions be adopted, and all Senate Joint Resolutions on the Consent Calendar be concurred in, which motion prevailed by the following vote:

Ayes.	92
Noes.	0

Representatives voting aye were: Allen, Anderson, Arriola, Bell, Bittle, Bivens, Bragg, Byrd, Callicott, Chiles, Chumney, Clark, Coffey, Collier, Copeland, Crain, Cross, Curlee, Davidson, Davis (Cocke), Davis (Gibson), Davis (Knox), DeBerry, Dixon, Duer, Ferguson, Fowlkes, Givens, Gunnels, Haley, Halteman, Hargrove, Harrill, Hassell, Haun, Head, Herron, Hill, Hillis, Holcomb, Holt, Hubbard, Huskey, Jackson, Johnson, Joyce, Kent, Kernell, Kisber, Knight, Liles, Love, McAfee, McDaniel, McKee, Meyer, Moore, Napier, Niceley, Nuber, Odom, Peroulas, Draper, Phillips, Pinion, Pruitt, Purcell, Rhinehart, Ridgeway, Rigsby, Rinks, Robinson (Davidson), Robinson (Hamilton), Robinson (Washington), Severance, Shirley, Sipes, Stamps, Tindell, Tullos, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Whitson, Williams (Shelby), Williams (Union), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 92.

A motion to reconsider was tabled.

REGULAR CALENDAR

***Senate Bill No. 0196** -- Driver Licenses -- Permits reinstatement of driving privileges in certain circumstances. Amends TCA 55-12-114.

Further consideration of Senate Bill No. 196, previously considered on March 25, 1991, at which time the House substituted Senate Bill No. 196 for House Bill No. 287 and reset the bill to the Calendar for April 1, 1991.

Rep. Odom moved that **Senate Bill No. 196** be passed on third and final consideration, which motion prevailed by the following vote:

Ayes.	81
Noes.	9
Present and not voting.	1

Representatives voting aye were: Anderson, Arriola, Bell, Bittle, Bivens, Bragg, Byrd, Callicott, Chiles, Clark, Coffey, Collier, Crain, Cross, Davidson, Davis (Cocke), Davis (Gibson), Davis (Knox), DeBerry, Dixon, Duer, Ferguson, Fowlkes, Givens, Gunnels, Haley, Halteman, Harrill, Hassell, Head, Herron, Hillis, Holt, Hubbard, Huskey, Jackson, Johnson, Jones U (Shelby), Joyce, Kent, Kernell, Kisber, Liles, Love, McAfee, McDaniel, McKee, Meyer,

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Moore, Napier, Niceley, Odom, Peroulas Draper, Phillips, Pinion, Pruitt, Purcell, Rhinehart, Ridgeway, Rigsby, Rinks, Robinson (Davidson), Robinson (Hamilton), Robinson (Washington), Severance, Shirley, Sipes, Stamps, Tindell, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Williams (Shelby), Williams (Union), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 81.

Representatives voting no were: Allen, Chumney, Curlee, Haun, Hill, Holcomb, Nuber, Tullos, Whitson -- 9.

Representatives present and not voting were: Hargrove -- 1.

A motion to reconsider was tabled.

***House Bill No. 0341 -- Public Works Projects --** Increases minimum dollar amount of public works contracts from \$25,000 to \$100,000 above which contractors must post bond. Amends TCA 12-4-201.

Rep. Dixon moved that House Bill No. 341 be passed on third and final consideration, after which he moved that House Bill No. 341 be reset one week to the Calendar for Monday, April 8, 1991, which motion prevailed.

***House Bill No. 0483 -- Health and Environment, Dept. of --** Requires board for licensing health care facilities and health facilities commission to annually report on impact on health care needs of minorities and disadvantaged persons. Amends TCA, Title 68.

Rep. Dixon moved that House Bill No. 483 be passed on third and final consideration, which motion prevailed by the following vote:

Ayes.	86
Noes.	3
Present and not voting.	3

Representatives voting aye were: Allen, Anderson, Arriola, Bell, Bittle, Bivens, Byrd, Callicott, Chiles, Chumney, Clark, Coffey, Collier, Crain, Cross, Curlee, Davidson, Davis (Cocke), Davis (Gibson), Davis (Knox), DeBerry, Dixon, Duer, Ferguson, Fowlkes, Gunnels, Haley, Halteman, Hargrove, Harrill, Hassell, Herron, Hill, Hillis, Holcomb, Holt, Hubbard, Huskey, Jackson, Johnson, Jones U (Shelby), Joyce, Kent, Kernell, King, Kisber, Knight, Liles, Love, McAfee, McDaniel, McKee, Meyer, Moore, Napier, Niceley, Nuber, Odom, Peroulas Draper, Phillips, Pinion, Pruitt, Purcell, Rhinehart, Ridgeway, Rigsby, Rinks, Robinson (Davidson), Robinson (Hamilton), Severance, Shirley, Sipes, Stamps, Tindell, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Whitson, Williams (Shelby), Williams (Union), Windle, Winningham, Wood, Mr. Speaker Naifeh -- 86.

Representatives voting no were: Bragg, Haun, Tullos -- 3.

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Representatives present and not voting were: Givens, Head, Wix
-- 3.

A motion to reconsider was tabled.

House Bill No. 0484 -- Medical Occupations -- Revises Physician Assistants Act. Amends TCA, Title 63, Ch. 19.

On motion, House Bill No. 484 was made to conform with Senate Bill No. 272.

On motion, **Senate Bill No. 272**, on same subject, was substituted for House Bill No. 484.

Rep. Dixon moved that **Senate Bill No. 272** be passed on third and final consideration, which motion prevailed by the following vote:

On motion, Rep. Dixon withdrew Health and Human Resources Committee Amendment No. 1.

Thereupon, Rep. Dixon moved that **Senate Bill No. 272** be passed on third and final consideration, which motion prevailed by the following vote:

Ayes.	92
Noes.	0

Representatives voting aye were: Allen, Anderson, Arriola, Bell, Bivens, Bragg, Byrd, Callicott, Chiles, Chumney, Clark, Coffey, Collier, Copeland, Crain, Cross, Curlee, Davidson, Davis (Cocke), Davis (Gibson), Davis (Knox), DeBerry, Dixon, Duer, Ferguson, Fowlkes, Givens, Gunnels, Haley, Halteman, Hargrove, Harrill, Hassell, Haun, Head, Herron, Hill, Hillis, Holcomb, Holt, Hubbard, Huskey, Jackson, Johnson, Jones U (Shelby), Joyce, Kent, Kernell, Kisber, Knight, Liles, Love, McAfee, McDaniel, McKee, Meyer, Moore, Napier, Niceley, Nuber, Odom, Peroulas, Draper, Phillips, Pinion, Pruitt, Purcell, Rhinehart, Ridgeway, Rigsby, Rinks, Robinson (Davidson), Robinson (Hamilton), Robinson (Washington), Severance, Shirley, Sipes, Stamps, Tindell, Tullos, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Whitson, Williams (Shelby), Williams (Union), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 92.

A motion to reconsider was tabled.

***House Bill No. 0485** -- Education -- Increases number of model dropout prevention programs from ten to fifteen; raises grants from \$6,000 to \$10,000. Amends TCA, Title 49.

Rep. Dixon moved that House Bill No. 485 be passed on third and final consideration.

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Rep. Dixon moved adoption of Health and Human Resources Committee Amendment No. 1 as follows:

Amendment No. 1

Amend House Bill No. 485 by adding the following new section immediately preceding the last section and by renumbering the subsequent section accordingly:

Section _____. The provisions of this act shall not be construed to be an appropriation of funds and no funds shall be obligated or expended pursuant to this act unless such funds are specifically appropriated by the General Appropriations Act.

On motion, Amendment No. 1 was adopted.

Rep. Napier moved to amend as follows:

Amendment No. 2

Amend House Bill No. 485 by redesignating Section 3 of the printed bill to be Section 4 and adding a new Section 3, as follows:

Section 3. In addition to any other model dropout prevention programs operated under the provisions of Section 49-1-520, at least one (1) such program shall be operated in counties with a population of not less than fifty-one thousand twenty-five (51,025) nor more than fifty-one thousand one hundred twenty-five (51,125), according to the 1980 federal census or any subsequent federal census.

Rep. Dixon moved that House Bill No. 485 be reset one week to the Calendar for Monday, April 8, 1991, which motion prevailed.

***House Bill No. 0486 -- Economic and Community Development --** Authorizes creation of local neighborhood development corporations in certain counties. Amends TCA, Title 13, Ch. 13.

Rep. Dixon moved that House Bill No. 486 be passed on third and final consideration.

Rep. Love moved adoption of State and Local Government Committee Amendment No. 1 as follows:

Amendment No. 1

AMEND House Bill No. 486 by deleting Sections 1 through 9 and substituting therefor the following:

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SECTION 1. Tennessee Code Annotated, Section 13-13-101, is amended by deleting the words "Local" and "Model".

SECTION 2. Tennessee Code Annotated, Section 13-13-102(b), is amended by deleting the words "a model local neighborhood development corporation" and by substituting instead the words "neighborhood development corporations".

SECTION 3. Tennessee Code Annotated, Section 13-13-103(b), is amended by deleting the words "the local neighborhood model development corporation" and by substituting instead the words "neighborhood development corporations".

SECTION 4. Tennessee Code Annotated, Section 13-13-103(c)(6), is amended by deleting the word "Such" and substituting therefore the word and number "Four (4)".

SECTION 5.

(a) Tennessee Code Annotated, Section 13-13-104(a)(1), is amended by deleting the words "A local neighborhood model development corporation" and by substituting instead the words "Each neighborhood development corporation".

(b) Tennessee Code Annotated, Section 13-13-104(a)(2) and 13-13-104(c), shall be amended by deleting the words "The local neighborhood model development corporation" and by substituting instead the words "each neighborhood development corporation".

(c) Tennessee Code Annotated, Section 13-13-104(a)(3), is amended by deleting the subsection in its entirety and substituting therefor the following:

(3) Each member shall serve for a term of three (3) years, the terms of the Board members to be staggered so that one-third (1/3) of the Board is re-appointed each year.

(d) Tennessee Code Annotated, Section 13-13-104(c)(4), is amended by deleting said section in its entirety and substituting the following:

(4) In making nominations for appointment to the Board, the Board shall consult with the member of the House of Representatives in whose district the neighborhood is located.

(e) Tennessee Code Annotated, Section

13-13-104(c)(7), is amended by deleting said section in its entirety and substituting instead the following:

The senator and representatives in whose district the neighborhood is located shall serve as advisory, nonvoting members of the Board.

(f) Tennessee Code Annotated, Section 13-13-104(c)(9), is amended by deleting the second sentence and substituting instead the following:

Any member may be removed from his or her appointment to the Board as provided in its bylaws.

(g) Tennessee Code Annotated, Section 13-13-104(c)(10), is amended by deleting said section in its entirety.

(h) Tennessee Code Annotated, Section 13-13-104, is amended by deleting the language of subsection (e) and by substituting instead the following:

(e) In any county having a population in excess of three hundred nineteen thousand (319,000) persons, according to the 1980 federal census or any subsequent federal census, the citizens of any state representative district, as defined by §3-1-103, of any senatorial district as defined by §3-1-102, may submit a petition to the TNDC board of directors proposing creation and designation of a neighborhood development corporation. The petition shall be signed by not less than ten percent (10%) of the number of voter from such state representative district or senatorial district who voted in the gubernatorial election immediately preceding the submission of such petition. The petition shall include a statement of the proposed types of services or assistance to be rendered or the proposed projects or programs to be conducted by the proposed neighborhood development corporation, and the necessity for such services, assistance, projects, or programs for developing increased economic opportunity and self-sufficiency in the neighborhood. The petition shall document the extent to which the neighborhood (i.e., house or senate district, portion thereof) persistently suffers from the debilitating problems of chronic unemployment, below average educational attainment, low household income, and limited economic opportunity. The TNDC board may approve creation of and may designate not more than one (1)

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neighborhood development corporation within any such house district; shall designate the boundaries of any neighborhood development corporation so approved and designated; and shall provide assistance in the creation of any neighborhood development corporation.

SECTION 6.

(a) Tennessee Code Annotated, Section 13-13-105, is amended by deleting the words "The local neighborhood model development corporation" and by substituting instead the words "Each neighborhood development corporation".

(b) Tennessee Code Annotated, Section 13-13-105(1), is amended by deleting the word "To" and substituting instead the words "To adopt a charter and to".

(c) Tennessee Code Annotated, Section 13-13-105, is amended by adding a new appropriately designated subsection:

() To exercise all power granted to not-for-profit corporations under Title 48.

SECTION 7. Tennessee Code Annotated, Section 13-13-106, is amended by deleting the words "The local neighborhood model development corporation" and by substituting instead the words "Each neighborhood development corporation".

SECTION 8. Tennessee Code Annotated, Section 13-13-107, is amended by deleting the language of the section and by substituting instead the following:

If a neighborhood development corporation receives a grant or appropriation from the state or any agency thereof, then the corporation shall submit a complete and detailed report of the corporation's activities to TNDC within ninety (90) days following the end of the corporation's fiscal year.

SECTION 9. Tennessee Code Annotated, Section 13-13-108, is amended by deleting the language of the section and by substituting instead the following:

The books and records of a neighborhood development corporation shall be subject to an annual audit by the state comptroller if the corporation has received a grant or appropriation from the state or any agency thereof.

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SECTION 10. This act shall take effect on July 1, 1991, the public welfare requiring it.

On motion, Amendment No. 1 was adopted.

Rep. Napier moved to amend as follows:

Amendment No. 2

Amend House Bill No. 486 by adding the following new section immediately before the effective date section and numbering the sections accordingly:

SECTION _____. Tennessee Code Annotated, Section 13-13-104, is amended by adding the following words and punctuation before the words "according to the 1980 federal census" in the first sentence of subsection (e):

and in any county having a population of not less than 51,000 nor more than 51,200,

On motion, Amendment No. 2 failed to be adopted.

Thereupon, Rep. Dixon moved that **House Bill No. 486**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes.	86
Noes.	1
Present and not voting.	2

Representatives voting aye were: Allen, Arriola, Bell, Bittle, Bivens, Bragg, Byrd, Callicott, Chiles, Chumney, Clark, Coffey, Collier, Copeland, Crain, Cross, Curlee, Davidson, Davis (Cocke), Davis (Gibson), Davis (Knox), DeBerry, Dixon, Duer, Ferguson, Fowlkes, Gunnels, Haley, Halteman, Hargrove, Harrill, Hassell, Head, Hill, Hillis, Holcomb, Holt, Hubbard, Huskey, Jackson, Johnson, Jones U (Shelby), Joyce, Kent, Kernell, Kisber, Knight, Liles, Love, McDaniel, McKee, Meyer, Moore, Napier, Niceley, Nuber, Peroulas, Draper, Phillips, Pruitt, Purcell, Rhinehart, Ridgeway, Rigsby, Rinks, Robinson (Davidson), Robinson (Hamilton), Robinson (Washington), Severance, Shirley, Sipes, Stamps, Tindell, Tullos, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Whitson, Williams (Shelby), Williams (Union), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 86.

Representatives voting no were: Haun -- 1.

Representatives present and not voting were: Givens, Pinion -- 2.

A motion to reconsider was tabled.

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House Bill No. 1334 -- Tobacco, Tobacco Products -- Increases penalties for violating of Unfair Cigarette Sales Law from Class C misdemeanor to graduated fines based on number of violations and graduated license suspensions; adds additional unlawful activity. Amends TCA 47-25-303, 303, 311.

Rep. Rhinehart moved that House Bill No. 1334 be passed on third and final consideration.

Rep. Davis (Gibson) moved adoption of Agriculture Committee Amendment No. 1 as follows:

Amendment No. 1

AMEND House Bill No. 1334 by adding the following at the end of Section 1:

Tennessee Code Annotated, Section 47-25-303(a) is further amended by deleting the last sentence in its entirety.

Tennessee Code Annotated, Section 47-25-303(b) is amended by deleting subdivision (2) in its entirety.

AND FURTHER AMEND by deleting the language "subsection (b) in its" in the directory language of Section 3 and by substituting instead the language "subsections (b) and (c) in their".

AND FURTHER AMEND by deleting the words "penalized under" wherever they appear in the amendatory language of Section 3 and by substituting instead the words "found in violation of".

AND FURTHER AMEND by adding the following language at the end of the amendatory subsection (b) in Section 3:

(c) Any person whose license is revoked or suspended under this section who continues to engage in the unauthorized sale, distribution, or handling of cigarettes in this state either directly, or through any agent or third party acting on behalf of such person shall be charged with an additional violation of this part and shall also be in violation of Tennessee Code Annotated, Section 67-4-1015.

AND FURTHER AMEND by adding the following new section immediately preceding the last section and by renumbering the subsequent section accordingly:

Section _____. Tennessee Code Annotated, Section 47-25-304, is amended by deleting the section in its entirety.

Tennessee Code Annotated, Section 47-25-305, is amended by deleting the section in its entirety.

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On motion, Amendment No. 1 was adopted.

Thereupon, Rep. Rhinehart moved that **House Bill No. 1334**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes.	91
Noes.	0
Present and not voting.	2

Representatives voting aye were: Allen, Anderson, Arriola, Bell, Bittle, Bivens, Bragg, Byrd, Callicott, Chiles, Chumney, Clark, Coffey, Collier, Copeland, Crain, Cross, Curlee, Davidson, Davis (Cocke), Davis (Gibson), Davis (Knox), DeBerry, Dixon, Duer, Ferguson, Fowlkes, Givens, Gunnels, Haley, Halteman, Hargrove, Harrill, Hassell, Haun, Head, Hill, Hillis, Holcomb, Holt, Hubbard, Huskey, Jackson, Johnson, Jones U (Shelby), Joyce, Kent, Kernell, Kisber, Knight, Liles, Love, McAfee, McDaniel, McKee, Meyer, Moore, Napier, Nicefey, Nuber, Odom, Peroulas Draper, Phillips, Pinion, Pruitt, Purcell, Rhinehart, Ridgeway, Rigsby, Rinks, Robinson (Davidson), Robinson (Hamilton), Robinson (Washington), Severance, Shirley, Sipes, Stamps, Tindell, Tullos, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Whitson, Williams (Shelby), Williams (Union), Windle, Winningham, Wix, Wood -- 91.

Representatives present and not voting were: Herron, Mr. Speaker Naifeh -- 2.

A motion to reconsider was tabled.

House Bill No. 0689 -- Insurance, Liability -- Establishes strong insurance regulations. Amends TCA, Title 56.

Rep. Bivens moved that House Bill No. 689 be passed on third and final consideration.

Rep. Rhinehart moved adoption of Commerce Committee Amendment No. 1 as follows:

Amend House Bill No. 689 by deleting all language after the enacting clause and by substituting instead the following:

Amendment No. 1

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 2, Part 1 is amended by adding a new section as follows:

Section ____.

(a) In addition to the minimum requirements set out in Tennessee Code Annotated, Section 56-2-114, and Tennessee Code Annotated, Section 56-2-115, and notwithstanding any other provision of law to the contrary, the commissioner may require, after notice

and hearing, additional amounts so that an insurer's capital, surplus funds, or surplus as regards policyholders shall be reasonable in relation to the insurer's outstanding liabilities and premiums, and adequate to its financial needs. For purposes of this part, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and premiums and adequate to its financial needs, the following factors, among others shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;

(2) The extent to which the insurer's business is diversified among the several lines of insurance;

(3) The number and size of risks insured in each line of business;

(4) The extent of the geographical dispersion of the insurer's insured risks;

(5) The nature and extent of the insurer's reinsurance program;

(6) The quality, diversification, and liquidity of the insurer's investment portfolio;

(7) The recent past and projected future trend in the size of the insurer's investment portfolio;

(8) The surplus as regards policyholders maintained by other comparable insurers;

(9) The adequacy of the insurer's reserves; and

(10) The quality and liquidity of investments in affiliates. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy or surplus as regards policyholders whenever in his judgment such investment so warrants.

(b) Before the commissioner shall take any action pursuant to this section, he shall give written notice to the insurer involved, stating specifically the nature of the alleged deficiency in capital and surplus. Within ten (10) days after receiving notice, the insurer may request a hearing which shall be held

within thirty (30) days of the request. The burden of proof shall be on the commissioner to show the inadequacy of capital and surplus by the preponderance of evidence. After such hearing, or if the insurer fails to request such hearing; the commissioner, if he shall find such deficiency, may enter an appropriate order under this section as he deems advisable.

(c) When the commissioner shall take action in any or all of the ways set out herein, the party aggrieved may appeal from said action to the Davidson County Chancery Court.

SECTION 2. Tennessee Code Annotated, Title 56, Chapter 3, Part 1 is amended by adding the following as new sections:

SECTION 1.

(a) All bonds permitted by this chapter or other evidences of debt having a fixed term and rate of interest held by an insurer may, if amply secured and not in default as to principal or interest, be valued as follows:

(1) If purchased at par, at the par value.

(2) If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made, or in lieu of such method, according to such accepted method of valuation as is approved by the department.

(3) Purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase, plus actual brokerage, transfer, postage or express charges paid in the acquisition of such securities.

(b) The department shall have full discretion in determining the method of calculating values according to the rules set forth in this section, but no such method or valuation shall be inconsistent with any applicable valuation or method used by insurers in general, or any such method then currently formulated or approved by the National Association of Insurance Commissioners or its successor organization.

SECTION 2.

(a) Securities, other than those referred to in Section 1 of this section, held by an insurer shall be

valued, in the discretion of the department, at their market value, or at their appraised value, or at prices determined by it as representing their fair market value. Provided, however, that nothing herein shall apply to loans secured by mortgages upon improved real property or upon leasehold estates in improved real property, which shall continue to be valued on the basis of amortization to maturity.

(b) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, at the discretion of the department and in accordance with such method of valuation as it may approve.

(c) Stock of a subsidiary corporation of an insurer shall not be valued at an amount in excess of the net value thereof as based upon those assets only of the subsidiary which would be eligible under this chapter for investment of the funds of the insurer directly.

(d) No valuations under this section shall be inconsistent with any applicable valuation or method then currently formulated or approved by the National Association of Insurance Commissioners or its successor organization.

(e) Before the commissioner shall take any action pursuant to this section, he shall give written notice to the insurer involved, stating specifically the nature of the alleged violation; and fixing a time and place, at least ten (10) days thereafter, when a hearing on the matter shall be held. The burden of proof shall be on the commissioner to show the lack of statutory criteria by the preponderance of evidence. After such hearing, or upon failure of the accused to appear at such hearing; the commissioner, if he shall find such violation, may enter an appropriate order under this section as he deems advisable.

(f) When the commissioner shall take action in any or all of the ways set out herein, the party aggrieved may appeal from said action to the Davidson County Chancery Court.

Section 3.

After January 1, 1992, no insurance company engaged in the business of property and casualty shall retain a maximum net amount on any single risk in excess of ten percent (10%) of said company's capital; or surplus funds, if such insurer is a mutual, reciprocal or Lloyd's plan insurer.

Provided, however, this section shall not apply to any company organized pursuant to Tennessee Code Annotated, Section 56-13-101 et seq.

Section 4.

(a) The investments of foreign and alien insurers shall be as permitted by the laws of their domicile but shall be of a quality substantially as high as those required under this act for similar funds of like domestic insurers.

(b) For the purpose of this act the domicile of an alien insurer, other than insurers formed under the laws of Canada, shall be that state designated by the insurer in writing with the commissioner at time of admission to this state or within six (6) months after January 1, 1991, whichever date is the later, and may be any one of the following states:

(1) That in which the insurer was first authorized to transact insurance;

(2) That in which is located the insurer's principal place of business in the United States; or

(3) That in which is held the larger deposits of trustee assets of the insurer for the protection of its policyholders and creditors in the United States.

(c) If the insurer makes no such designation, its domicile shall be deemed to be that state in which is located its principal place of business in the United States.

(d) In the case of the insurer formed under the laws of Canada or a province of Canada, its domicile shall be deemed to be that province in which its head office is situated.

(e) Before the commissioner shall take any action pursuant to this section, he shall give written notice to the insurer involved, stating specifically the nature of the alleged violation; and fixing a time and place, at least ten (10) days thereafter, when a hearing on the matter shall be held. The burden of proof shall be on the commissioner to show the lack of statutory criteria by the preponderance of evidence. After such hearing, or upon failure of the accused to appear at such hearing, the commissioner, if he shall find such violation, may enter an appropriate order under this section as he deems advisable.

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(f) When the commissioner shall take action in any or all of the ways set out herein, the party aggrieved may appeal from said action to the Davidson County Chancery Court.

Section 5.

(a) The commissioner is authorized to promulgate rules and regulations to prescribe minimum standards for the establishment of liabilities and reserves resulting from insurance contracts issued by an insurer, including but not limited to unearned premium reserves, and liabilities for claims and losses unpaid and incurred but not reported claims. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

(b) The rules promulgated under this section shall contain provisions stating that before the commissioner shall take any action pursuant to such rules and regulations, he shall give written notice to the insurer involved, stating specifically the nature of any alleged violation, and fixing a time and place, at least ten (10) days thereafter, when a hearing on the matter shall be held. The burden of proof shall be on the commissioner to show the lack of minimum standards under such rules promulgated hereunder by the preponderance of evidence. After such hearing, or upon failure of the accused to appear at such hearing; the commissioner, if he shall find such violation, may enter an appropriate order under this section as he deems advisable.

(c) When the commissioner shall take action in any or all of the ways set out herein, the party aggrieved may appeal from said action to the Davidson County Chancery Court.

SECTION 3. Tennessee Code Annotated, Section 56-1-501(a), is amended by adding the following sentence:

The commissioner is authorized to promulgate rules to require that such statement contain the opinion by a qualified actuary or loss reserve specialist on life and health policy claim reserves, and loss and loss adjustment expense reserves for all other insurers on an annual basis. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 4. Tennessee Code Annotated, Title 56, is amended by deleting Chapter 9 in its entirety and by substituting instead the following sections:

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.

(a) The provisions of SECTION 4 of this act shall be cited as the Insurers Rehabilitation and Liquidation Act.

(b) SECTION 4 of this act shall not be interpreted to limit the powers granted the commissioner by other provisions of the law.

(c) SECTION 4 of this act shall be liberally construed to effect the purpose stated in subsection (d) of this section.

(d) The purpose of SECTION 4 of this act is the protection of the interests of insureds, claimants, creditors and the public generally, with minimum interference with the normal prerogatives of the owners and managers of insurers, through:

(1) Early detection of any potentially dangerous condition in an insurer, and prompt application of appropriate corrective measures;

(2) Improved methods for rehabilitating insurers, involving the cooperation and management expertise of the insurance industry;

(3) Enhanced efficiency and economy of liquidation, through clarification of the law, to minimize legal uncertainty and litigation;

(4) Equitable apportionment of any unavoidable loss;

(5) Lessening the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process, and by extending the scope of personal jurisdiction over debtors of the insurer outside this state;

(6) Regulation of the insurance business by the impact of the law relating to delinquency procedures and substantive rules on the entire insurance business; and

(7) Providing for a comprehensive scheme for the rehabilitation and liquidation of insurance companies and those subject to SECTION 4 of this act as part of the regulation of the business of insurance, insurance industry and insurers in this state. Proceedings in cases of insurer

insolvency and delinquency are deemed an integral aspect of the business of insurance and are of vital public interest and concern.

SECTION 2. The proceedings authorized by SECTION 4 of this act may be applied to:

(a) All insurers who are doing, or have done, an insurance business in this state, and against whom claims arising from that business may exist now or in the future.

(b) All insurers who purport to do an insurance business in this state.

(c) All insurers who have insureds resident in this state.

(d) All other persons organized or in the process of organizing with the intent to do an insurance business in this state.

(e) All nonprofit service plans and all fraternal benefit societies and beneficial societies subject to Tennessee Code Annotated, Section 56-25-1606.

(f) All title insurance companies subject to Tennessee Code Annotated, Section 56-35-101 et seq.

(g) All prepaid health care delivery plans.

(h) All fidelity, bonding or surety companies under Tennessee Code Annotated, Section 56-15-101 et seq. and all annuity companies who do business in this state.

SECTION 3. For the purposes of SECTION 4 of this act, unless the context otherwise requires:

(1) "Ancillary state" means any state other than a domiciliary state.

(2) "Commissioner" means the commissioner of the department of commerce and insurance of this state.

(3) "Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed or contingent.

(4) "Delinquency proceeding" means any proceeding instituted against an insurer for the

purpose of liquidating, rehabilitating, reorganizing or conserving such insurer, and any summary proceeding under Section 9 of this section. "Formal delinquency proceeding" means any liquidation or rehabilitation proceeding.

(5) "Doing business" includes any of the following acts, whether effected by mail or otherwise:

(A) The issuance or delivery of contracts of insurance to persons resident in this state;

(B) The solicitation of applications for such contracts, or other negotiations preliminary to the execution of such contracts;

(C) The collection of premiums, membership fees, assessments, or other consideration for such contracts;

(D) The transaction of matters subsequent to execution of such contracts and arising out of them; or

(E) Operating under a license or certificate of authority, as an insurer, issued by the Insurance Department.

(6) "Domiciliary state" means the state in which an insurer is incorporated or organized, or, in the case of an alien insurer, its state of entry.

(7) "Fair consideration" is given for property or obligation:

(A) When in exchange for such property or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or services are rendered or an obligation is incurred or an antecedent debt is satisfied; or

(B) When such property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared to the value of the property or obligation obtained.

(8) "Foreign country" means any other jurisdiction not in any state.

(9) "General assets" means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, "general assets" includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets.

(10) "Guaranty association" means the Tennessee Insurance Guaranty Association created by Tennessee Code Annotated, Section 56-12-101 et seq., as amended, the Life and Health Insurance Guaranty Association Act created by Tennessee Code Annotated, Section 56-12-201 et seq., as amended, and any other similar entity now or hereafter created by the legislature of this state for the payment of claims of insolvent insurers. "Foreign guaranty association" means any similar entities now in existence in or hereafter created by the legislature of any other state.

(11) "Insolvency" or "insolvent" means:

(A) For an insurer issuing only assessable fire insurance policies:

(i) The inability to pay any obligation within thirty (30) days after it becomes payable; or

(ii) If an assessment be made within thirty (30) days after such date, the inability to pay such obligation thirty (30) days following the date specified in the first assessment notice issued after the date of loss pursuant to Tennessee Code Annotated, Section 56-20-106.

(B) For any other insurer, that it is unable to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities plus the greater of:

(i) Any capital and surplus required by law for its organization; or

(ii) The total par or stated value of its authorized and issued capital stock.

(C) As to any insurer licensed to do business in this state as of the effective date of this act which does not meet the standard established under item (2) of Section 3 of this section, the term "insolvency" or "insolvent" shall mean, for a period not to exceed three (3) years from the effective date of this act, that it is unable to pay its obligations when they are due or that its admitted assets do not exceed its liabilities plus any required capital contribution ordered by the commissioner under provisions of the insurance law.

(D) For purposes of this subsection "liabilities" shall include but not be limited to reserves required by statute or by insurance department general regulations or specific requirements imposed by the commissioner upon a subject company at the time of admission or subsequent thereto.

(12) "Insurer" means any person who has done, purports to do, is doing or is licensed to do an insurance business, and is or has been subject to the authority of, or to liquidation, rehabilitation, reorganization, supervision, or conservation by, any insurance commissioner. For purposes of SECTION 4 of this act, any other persons included under Section 2 of this section shall be deemed to be insurers.

(13) "Preferred claim" means any claim with respect to which the terms of this act accord priority of payment from the general assets of the insurer.

(14) "Receiver" means receiver, liquidator, rehabilitator or conservator as the context requires.

(15) "Reciprocal state" means any state other than this state in which in substance and effect Sections 17(a), 51, 52 and 54 through 56 of SECTION 4 of this act are in force, and in which provisions are in force requiring that the commissioner or equivalent official be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

(16) "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which have become liens upon specific assets by reason of judicial process.

(17) "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any claim secured by general assets.

(18) "State" means any state, district, or territory of the United States and the Panama Canal Zone.

(19) "Transfer" shall include the sale and every other and different mode, direct or indirect, of disposing of or of parting with property or with an interest therein, or with the possession thereof or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by the debtor.

SECTION 4.

(a) No delinquency proceeding shall be commenced under SECTION 4 of this act by anyone other than the commissioner of insurance and no court shall have jurisdiction to entertain, hear or determine any proceeding commenced by any other person.

(b) No court of this state shall have jurisdiction to entertain, hear or determine any complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation or receivership of any insurer, or praying for an injunction or restraining order or other relief preliminary to, incidental to or relating to such proceedings other than in accordance with SECTION 4 of this act.

(c) In addition to other grounds for jurisdiction provided by the law of this state, a court of this state having jurisdiction of the subject matter has jurisdiction over a person served pursuant to the Tennessee Rules of Civil Procedure or other applicable provisions of law

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in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state:

(1) If the person served is an agent, broker, or other person who has at any time written policies of insurance for or has acted in any manner whatsoever on behalf of an insurer against which a delinquency proceeding has been instituted, in any action resulting from or incident to such a relationship with the insurer; or

(2) If the person served is a reinsurer who has at any time entered into a contract of reinsurance with an insurer against which a delinquency proceeding has been instituted, or is an agent or broker of or for the reinsurer, in any action on or incident to the reinsurance contract; or

(3) If the person served is or has been an officer, director, manager, trustee, organizer, promoter, or other person in a position of comparable authority or influence over an insurer against which a delinquency proceeding has been instituted, in any action resulting from or incident to such a relationship with the insurer; or

(4) If the person served is or was at the time of the institution of the delinquency proceeding against the insurer holding assets in which the receiver claims an interest on behalf of the insurer, in any action concerning the assets; or

(5) If the person served is obligated to the insurer in any way whatsoever, in any action on or incident to the obligation.

(d) If the court on motion of any party finds that any action should as a matter of substantial justice be tried in a forum outside this state, the court may enter an appropriate order to stay further proceedings on the action in this state.

(e) All action herein authorized shall be brought in the Davidson County Chancery Court.

SECTION 5.

(a) Any receiver appointed in a proceeding under of SECTION 4 of this act may at any time apply for, and any court of general jurisdiction may grant, such restraining orders, preliminary and permanent injunctions, and other orders as may be deemed necessary and proper to prevent:

- (1) The transaction of further business;
- (2) The transfer of property;
- (3) Interference with the receiver or with a proceeding under SECTION 4 of this act;
- (4) Waste of the insurer's assets;
- (5) Dissipation and transfer of bank accounts;
- (6) The institution or further prosecution of any actions or proceedings;
- (7) The obtaining of preferences, judgments, attachments, garnishments or liens against the insurer, its assets or its policyholders;
- (8) The levying of execution against the insurer, its assets or its policyholders;
- (9) The making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;
- (10) The withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer; or
- (11) Any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors or shareholders, or the administration of any proceeding under SECTION 4 of this act.

(b) The receiver may apply to any court outside of the state for the relief described in subsection (a) of this section.

SECTION 6.

(a) Any officer, manager, director, trustee, owner, employee or agent of any insurer, or any other persons with authority over or in charge of any segment of the insurer's affairs, shall cooperate with the commissioner in any proceeding under SECTION 4 of this act or any investigation preliminary to the proceeding. The term "person" as used in this section, shall include any person who exercises control directly or indirectly over activities of the insurer through any holding company or other affiliate of the insurer. "To cooperate" shall include, but shall not be limited to, the following:

(1) To reply promptly in writing to any inquiry from the commissioner requesting such a reply; and

(2) To make available to the commissioner any books, accounts, documents, or other records or information or property of or pertaining to the insurer and in his possession, custody or control.

(b) No person shall obstruct or interfere with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto.

(c) This section shall not be construed to abridge otherwise existing legal rights, including the right to resist a petition for liquidation or other delinquency proceedings, or other orders.

(d) Any person included within subsection (a) of this section who willfully and wrongfully obstructs or interferes with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto, or who violates any order the commissioner issued validly under SECTION 4 of this act may:

(1) Be sentenced by a court of competent jurisdiction to pay a fine not exceeding ten thousand dollars (\$10,000) or be punished for a Class E felony, or both; or

(2) After a hearing, be subject to the imposition by the commissioner of a civil penalty not to exceed ten thousand dollars (\$10,000) and shall be subject further to the revocation or suspension of any insurance licenses issued by the commissioner.

SECTION 7. Every proceeding heretofore commenced under the laws in effect before the enactment of this act shall be deemed to have commenced under SECTION 4 of this act for the purpose of conducting the proceeding henceforth, except that in the discretion of the commissioner the proceeding may be continued, in whole or in part, as it would have been continued had SECTION 4 of this act not been enacted.

SECTION 8. No insurer that is subject to any delinquency proceedings, whether formal or informal (administrative or judicial), shall:

(a) Be released from such proceeding, unless such proceeding is converted into a judicial rehabilitation or liquidation proceeding;

(b) Be permitted to solicit or accept new business or request or accept the restoration of any suspended or revoked license or certificate of authority;

(c) Be returned to the control of its shareholders or private management; or

(d) Have any of its assets returned to the control of its shareholders or private management until all payments of or on account of the insurer's contractual obligations by all guaranty associations, along with all expenses thereof and interest on all such payments and expenses, shall have been repaid to the guaranty associations or a plan of repayment by the insurer shall have been approved by the guaranty association.

ARTICLE II. SUMMARY PROCEEDINGS

SECTION 9.

(a) The commissioner may file in the Davidson County Chancery Court of this state a petition alleging, with respect to a domestic insurer:

(1) That there exists any grounds that would justify a court order for a formal delinquency proceeding against an insurer under this act;

(2) That the interests of policyholders, creditors or the public will be endangered by delay; and

(3) The contents of an order deemed necessary by the commissioner.

(b) Upon a filing under subsection (a), the court may issue forthwith, ex parte and without a hearing, the requested order which shall direct the commissioner to take possession and control of all or a part of the property, books, accounts, documents, and other records of an insurer, and of the premises occupied by it for transaction of its business; and until further order of the court enjoin the insurer and its officers, managers, agents, and employees from disposition of its property and from the transaction of its business except with the written consent of the commissioner.

(c) The court shall specify in the order what its duration shall be, which shall be such time as the court deems necessary for the commissioner to ascertain the condition of the insurer. On motion of either party or on its own motion, the court may from time to time hold such hearings as it deems desirable after such notice as it deems appropriate, and may extend, shorten, or modify the terms of the seizure order. The court shall vacate the seizure order if the commissioner fails to commence a formal proceeding under SECTION 4 of this act after having had a reasonable opportunity to do so. An order of the court pursuant to a formal proceeding under SECTION 4 of this act shall ipso facto vacate the seizure order.

(d) Entry of a seizure order under this section shall not constitute an anticipatory breach of any contract of the insurer.

(e) An insurer subject to an ex parte order under this section may petition the court at any time after the issuance of such order for a hearing and review of the order. The court shall hold such a hearing and review not more than fifteen (15) days after the request. A hearing under this subsection may be held privately in chambers and it shall be so held if the insurer proceeded against so requests.

(f) If, at any time after the issuance of such an order, it appears to the court that any person whose interest is or will be substantially affected by the order did not appear at the hearing and has not been served, the court may order that notice be given. An order that notice

be given shall not stay the effect of any order previously issued by the court.

SECTION 10. In all proceedings and judicial reviews thereof under Section 9 of SECTION 4 of this act, all records of the insurer, other documents, and all insurance department files and court records and papers, so far as they pertain to or are a part of the record of the proceedings, shall be and remain confidential except as is necessary to obtain compliance therewith, unless and until the Davidson County Chancery Court, after hearing arguments from the parties in chambers, shall order otherwise; or unless the insurer requests that the matter be made public. Until such court order, all papers filed with the clerk of the Davidson County Chancery Court shall be held by him in a confidential file.

ARTICLE III. FORMAL PROCEEDINGS

SECTION 11. The commissioner may apply by petition to the Davidson County Chancery Court for an order authorizing him to rehabilitate a domestic insurer or an alien insurer domiciled in this state on any one or more of the following grounds:

(a) The insurer is in such condition that the further transaction of business would be hazardous financially to its policyholders, creditors or the public.

(b) There is reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer's assets, forgery or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer that if established would endanger assets in an amount threatening the solvency of the insurer.

(c) The insurer has failed to remove any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, employee, or other person; if the person has been found after notice and hearing by the commissioner to be dishonest or untrustworthy in a way affecting the insurer's business.

(d) Control of the insurer, whether by stock ownership or otherwise, and whether direct or indirect, is in a person or persons found after notice and hearing to be untrustworthy.

(e) Any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, director or trustee, employee, or other person, has refused to be examined under oath by the commissioner concerning its affairs, whether in this state or elsewhere; and after reasonable notice of the fact, the insurer has failed promptly and effectively to terminate the employment and status of the person and all his influence on management.

(f) After demand by the commissioner in accordance with the provisions of SECTION 4 of this act, the insurer has failed to promptly make available for examination any of its own property, books, accounts, documents, or other records, or those of any subsidiary or related company within the control of the insurer, or those of any person having executive authority in the insurer so far as they pertain to the insurer.

(g) Without first obtaining the written consent of the commissioner, the insurer has transferred, or attempted to transfer, in any manner or contrary to Section 56-11-201 et seq., substantially its entire property or business, or has entered into any transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person.

(h) The insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator or sequestrator or similar fiduciary of the insurer or its property otherwise than as authorized under the insurance laws of this state, and such appointment has been made or is imminent, and such appointment might oust the courts of this state of jurisdiction or might prejudice orderly delinquency proceedings under SECTION 4 of this act.

(i) Within the previous four (4) years the insurer has willfully violated its charter or articles of incorporation, its bylaws, any insurance law of this state, or any valid order of the commissioner.

(j) The insurer has failed to pay within sixty (60) days after due date any obligation to any state or any subdivision thereof or any

judgment entered in any state, if the court in which such judgment was entered had jurisdiction over such subject matter except that such nonpayment shall not be a ground until sixty (60) days after any good faith effort by the insurer to contest the obligation has been terminated, whether it is before the commissioner or in the courts, or the insurer has systematically attempted to compromise or renegotiate previously agreed settlements with its creditors on the ground that it is financially unable to pay its obligations in full.

(k) The insurer has failed to file its annual report or other financial report required by statute within the time allowed by law and, after written demand by the commissioner, has failed to give an adequate explanation immediately.

(l) The board of directors or the holders of a majority of the shares entitled to vote, or a majority of those individuals entitled to the control of those entities specified in Section 2 of SECTION 4 of this act, request or consent to rehabilitation under SECTION 4 of this act.

SECTION 12.

(a) An order to rehabilitate the business of a domestic insurer, or an alien insurer domiciled in this state, shall appoint the commissioner and his successors in office the rehabilitator, and shall direct the rehabilitator forthwith to take possession of the assets of the insurer, and to administer them under the general supervision of the court. The filing or recording of the order with the clerk of the Davidson County Chancery Court or recorder of deeds of the county in which the principal business of the company is conducted, or the county in which its principal office or place of business is located, shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds would have imparted. The order to rehabilitate the insurer shall by operation of law vest title to all assets of the insurer in the rehabilitator.

(b) Any order issued under this section shall require accountings to the court by the rehabilitator. Accountings shall be at such intervals as the court specifies in its order but no less frequently than semi annually. Each

accounting shall include a report concerning the rehabilitator's opinion as to the likelihood that a plan under Section 13(d) of SECTION 4 of this act shall be prepared by the rehabilitator and the timetable for doing so.

(c) Entry of an order of rehabilitation shall not constitute an anticipatory breach of any contracts of the insurer nor shall it be grounds for retroactive revocation or retroactive cancellation of any contracts of the insurer, unless such revocation or cancellation is done by the rehabilitator pursuant to Section 13 of SECTION 4 of this act.

SECTION 13.

(a) The commissioner as rehabilitator may appoint one or more special deputies, who shall have all the powers and responsibilities of the rehabilitator granted under this section, and the commissioner may employ such counsel, clerks and assistants as deemed necessary. The compensation of the special deputy, counsel, clerks and assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the commissioner, with the approval of the court and shall be paid out of the funds or assets of the insurer. The persons appointed under this section shall serve at the pleasure of the commissioner. The commissioner, as rehabilitator, may, with the approval of the court, appoint an advisory committee of policyholders, claimants, or other creditors including guaranty associations should such a committee be deemed necessary. Such committee shall serve at the pleasure of the commissioner and shall serve without compensation other than reimbursement for reasonable travel and per diem living expenses. No other committee of any nature shall be appointed by the commissioner or the court in rehabilitation proceedings conducted under this act.

(b) In the event that the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of any appropriation for the maintenance of the insurance department. Any amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of the insurance department out of the first available money of the insurer.

(c) The rehabilitator may take such action as he deems necessary or appropriate to reform and revitalize the insurer. He shall have all the powers of the directors, officers, and managers, whose authority shall be suspended, except as they are redelegated by the rehabilitator. He shall have full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with the property and business of the insurer.

(d) If it appears to the rehabilitator that there has been criminal or tortious conduct, or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, agent, broker, employee or other person, he may pursue all appropriate legal remedies on behalf of the insurer.

(e) If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger or other transformation of the insurer is appropriate, he shall prepare a plan to effect such changes. Upon application of the rehabilitator for approval of the plan, and after such notice and hearings as the court may prescribe, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. Any plan approved under this section shall be, in the judgment of the court, fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the policies of the company, if all rights of shareholders are first relinquished. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies, for such period and to such an extent as may be necessary.

(f) The rehabilitator shall have the power under Sections 25 and 26 of SECTION 4 of this act to avoid fraudulent transfers.

SECTION 14.

(a) Any court in this state before which any action or proceeding in which the insurer is a party, or is obligated to defend a party, is pending when a rehabilitation order against the insurer is entered shall stay the action or

proceeding for ninety (90) days and such additional time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The rehabilitator shall take such action respecting the pending litigation as he deems necessary in the interests of justice and for the protection of creditors, policyholders, and the public. The rehabilitator shall immediately consider all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

(b) No statute of limitations or defense of laches shall run with respect to any action by or against an insurer between the filing of a petition for appointment of a rehabilitator for that insurer and the order granting or denying that petition. Any action against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty (60) days after the order of rehabilitation is entered or the petition is denied. The rehabilitator may, upon an order for rehabilitation, within one (1) year or such other longer time as applicable law may permit, institute an action or proceeding on behalf of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which such order is entered.

(c) Any guaranty association or foreign guaranty association covering life or health insurance or annuities shall have standing to appear in any court proceeding concerning the rehabilitation of a life or health insurer if such association is or may become liable to SECTION 4 of this act as a result of the rehabilitation.

SECTION 15.

(a) Whenever the commissioner believes further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders or the public, or would be futile, the commissioner may petition the Davidson County Chancery Court for an order of liquidation. A petition under this subsection shall have the same effect as a petition under Section 16 of SECTION 4 of this act. The

Davidson County Chancery Court shall permit the directors of the insurer to take such actions as are reasonably necessary to defend against the petition and may order payment from the estate of the insurer of such costs and other expenses of defense as justice may require.

(b) The protection of the interests of insureds, claimants and the public requires the timely performance of all insurance policy obligations. If the payment of policy obligations is suspended in substantial part for a period of six (6) months at any time after the appointment of the rehabilitator and the rehabilitator has not filed an application for approval of a plan under Section 13(d) of SECTION 4 of this act, the rehabilitator shall petition the court for an order of liquidation on grounds of insolvency.

(c) The rehabilitator may at any time petition the Davidson County Chancery Court for an order terminating rehabilitation of an insurer. The court shall also permit the directors of the insurer to petition the court for an order terminating rehabilitation of the insurer and may order payment from the estate of the insurer of such costs and other expenses of such petition as justice may require. If the Davidson County Chancery Court finds that rehabilitation has been accomplished and that grounds for rehabilitation under Section 11 of SECTION 4 of this act no longer exist, it shall order that the insurer be restored to possession of its property and the control of the business. The Davidson County Chancery Court may also make that finding and issue that order at any time upon its own motion.

SECTION 16. The commissioner may petition the Davidson County Chancery Court for an order directing him to liquidate a domestic insurer or an alien insurer domiciled in this state on the basis:

(a) Of any ground for an order of rehabilitation as specified in Section 11 of SECTION 4 of this act, whether or not there has been a prior order directing the rehabilitation of the insurer;

(b) That the insurer is insolvent; or

(c) That the insurer is in such condition that the further transaction of business would be

hazardous, financially or otherwise, to its policyholders, its creditors or the public.

SECTION 17.

(a) An order to liquidate the business of a domestic insurer shall appoint the commissioner and his successors in office liquidator and shall direct the liquidator forthwith to take possession of the assets of the insurer and to administer them under the general supervision of the court. The liquidator shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books and records of the insurer ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the Clerk of the Davidson County Chancery Court and the recorder of deeds of the county in which its principal office or place or business is located; or, in the case of real estate, with the recorder of deeds of the county where the property is located, shall impart the same notice as a deed, bill of sale or other evidence of title duly filed or recorded with that recorder of deeds would have imparted.

(b) Upon issuance of the order, the rights and liabilities of any such insurer and of its creditors, policyholders, shareholders, members and all other persons interested in its estate shall become fixed as of the date of entry of the order of liquidation, except as provided in Sections 18 and 36 of SECTION 4 of this act.

(c) An order to liquidate the business of an alien insurer domiciled in this state shall be in the same terms and have the same legal effect as an order to liquidate a domestic insurer, except that the assets and the business in the United States shall be the only assets and business included therein.

(d) At the time of petitioning for an order of liquidation, or at any time thereafter; the commissioner, after making appropriate findings of an insurer's insolvency, may petition the court for a judicial declaration of such insolvency. After providing such notice and hearing as it deems proper, the court may make the declaration.

(e) Any order issued under this section shall require financial reports to the court by the liquidator. Financial reports shall include (at a minimum) the assets and liabilities of the insurer and all funds received or disbursed by the liquidator during the current period. Financial reports shall be filed within one (1) year of the liquidation order and at least annually thereafter.

(f)

(1) Within five (5) days of the effective date of this act, or, if later, within five (5) days after the initiation of an appeal of an order of liquidation, which order has not been stayed, the commissioner shall present for the court's approval a plan for the continued performance of the defendant company's policy claims obligations, including the duty to defend insureds under liability insurance policies, during the pendency of an appeal. Such plan shall provide for the continued performance and payment of policy claims obligations in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation including the ground of insolvency. In the event the defendant company's financial condition will not, in the judgment of the commissioner, support the full performance of all policy claims obligations during the appeal pendency period, the plan may prefer the claims of certain policyholders and claimants over creditors and interested parties as well as other policyholders and claimants, as the commissioner finds to be fair and equitable considering the relative circumstances of such policyholders and claimants. The court shall examine the plan submitted by the commissioner and if it finds the plan to be in the best interests of the parties, the court shall approve the plan. No action shall lie against the commissioner or any of his deputies, agents, clerks, assistants or attorneys by any party based on preference in an appeal pendency plan approved by the court.

(2) The appeal pendency plan shall not supersede or affect the obligations of any insurance guaranty association.

(3) Any such plans shall provide for equitable adjustments to be made by the liquidator to any distributions of assets to guaranty associations, in the event that the liquidator pays claims from assets of the estate, which would otherwise be the obligations of any particular guaranty association but for the appeal of the order of liquidation, such that all guaranty associations equally benefit on a pro rata basis from the assets of the estate. Further, in the event an order of liquidation is set aside upon any appeal, the company shall not be released from delinquency proceedings unless and until all funds advanced by any guaranty association, including reasonable administrative expenses in connection therewith relating to obligations of the company, shall be repaid in full, together with interest at the judgment rate of interest or unless an arrangement for repayment thereof has been made with the consent of all applicable guaranty associations.

SECTION 18.

(a) All policies, including bonds and other noncancellable business, other than life or health insurance or annuities, in effect at the time of issuance of an order of liquidation shall continue in force only for the lesser of:

(1) A period of thirty (30) days from the date of entry of the liquidation orders;

(2) The expiration of the policy coverage;

(3) The date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy;

(4) The liquidator has effected a transfer of the policy obligation pursuant to Section 20(a)(9) of SECTION 4 of this act; or

(5) The date proposed by the liquidator and approved by the court to cancel coverage.

(b) An order of liquidation under Section 17 of SECTION 4 of this act shall terminate

coverages at the time specified in subsection (a) for purposes of any other statute.

(c) Policies of life or health insurance or annuities shall continue in force for such period and under such terms as is provided for by any applicable guaranty association or foreign guaranty association.

(d) Policies of life or health insurance or annuities or any period or coverage of such policies not covered by a guaranty association or foreign guaranty association shall terminate under subsections (a) and (b).

SECTION 19. The commissioner may petition for an order dissolving the corporate existence of a domestic insurer or the United States branch of an alien insurer domiciled in this state at the time he applies for a liquidation order. The court shall order dissolution of the corporation upon petition by the commissioner upon or after the granting of a liquidation order. If the dissolution has not previously been ordered, it shall be effected by operation of law upon the discharge of the liquidator if the insurer is insolvent but may be ordered by the court upon the discharge of the liquidator if the insurer is under a liquidation order for some other reason.

SECTION 20.

(a) The liquidator shall have the power:

(1) To appoint a special deputy or deputies to act for him under SECTION 4 of this act, and to determine his reasonable compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.

(2) To employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants and such other personnel as he may deem necessary to assist in the liquidation.

(3) To appoint, with the approval of the court, an advisory committee of policyholders, claimants or other creditors including guaranty associations should such a committee be deemed necessary. Such committee shall serve at the pleasure of the

commissioner and shall serve without compensation other than reimbursement for reasonable travel and per diem living expenses. No other committee of any nature shall be appointed by the commissioner or the court in liquidation proceedings conducted under this act.

(4) To fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers and consultants with the approval of the court.

(5) To pay reasonable compensation to persons appointed and to defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. In the event that the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of any appropriation for the maintenance of the insurance department. Any amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of the insurance department out of the first available moneys of the insurer.

(6) To hold hearings, to subpoena witnesses to compel their attendance, to administer oaths, to examine any person under oath, and to compel any person to subscribe to his testimony after it has been correctly reduced to writing; and in connection therewith to require the production of any books, papers, records or other documents which he deems relevant to the inquiry.

(7) To audit the books and records of all agents of the insurer insofar as those records relate to the business activities of the insurer.

(8) To collect all debts and moneys due and claims belonging to the insurer, wherever located, and for this purpose:

(i) To institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts;

(ii) To do such other acts as are necessary or expedient to collect, conserve or protect its assets or property, including the power to sell, compound, compromise or assign debts for purposes of collection upon such terms and conditions as he deems best; and

(iii) To pursue any creditor's remedies available to enforce his claims.

(9) To conduct public and private sales of the property of the insurer.

(10) To use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under Section 40 of SECTION 4 of this act.

(11) To acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon or otherwise dispose of or deal with, any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable. He shall also have power to execute, acknowledge and deliver any and all deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation.

(12) To borrow money on the security of the insurer's assets or without security and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation. Any such funds borrowed may be repaid as an administrative expense and have priority over any other claims in Class 1 under the priority of distribution.

(13) To enter into such contracts as are necessary to carry out the order to liquidate, and to affirm or disavow any contracts to which the insurer is a party.

(14) To continue to prosecute and to institute in the name of the insurer or in his own name any and all suits and other

legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims he deems unprofitable to pursue further. If the insurer is dissolved under Section 19 of SECTION 4 of this act, he shall have the power to apply to any court in this state or elsewhere for leave to substitute himself for the insurer as plaintiff.

(15) To prosecute any action which may exist in behalf of the creditors, members, policyholders or shareholders of the insurer against any officer of the insurer, or any other person.

(16) To remove any or all records and property of the insurer to the offices of the commissioner or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations shall have such reasonable access to the records of the insurer as is necessary for them to carry out their statutory obligations.

(17) To deposit in one or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions.

(18) To invest all sums not currently needed, unless the court orders otherwise.

(19) To file any necessary documents for record in the office of any recorder of deeds or record office in this state or elsewhere where property of the insurer is located.

(20) To assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit, the liquidator shall give precedence to such obligation and may defend only in the absence of a defense by such guaranty associations.

(21) To exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included with Sections 25 through 27 of SECTION 4 of this act.

(22) To intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and to act as the receiver or trustee whenever the appointment is offered.

(23) To enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation or dissolution of an insurer doing business in both states.

(24) To exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with the provisions of SECTION 4 of this act.

(b) The enumeration, in this section, of the powers and authority of the liquidator shall not be construed as a limitation upon him, nor shall it exclude in any manner his right to do such other acts not herein specifically enumerated or otherwise provided for, as may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.

(c) Notwithstanding the powers of the liquidator as stated in subsections (a) and (b) above, the liquidator shall have no obligation to defend claims or to continue to defend claims subsequent to the entry of a liquidation order.

SECTION 21.

(a) Unless the court otherwise directs, the liquidator shall give or cause to be given notice of the liquidation order as soon as possible:

(1) By first class mail and either by telegram or telephone to the insurance commissioner of each jurisdiction in which the insurer is doing business;

(2) By first class mail to any guaranty association or foreign guaranty association

which is or may become obligated as a result of the liquidation;

(3) By first class mail to all insurance agents of the insurer;

(4) By first class mail to all persons known or reasonably expected to have claims against the insurer including all policyholders, at their last known address as indicated by the records of the insurer; and

(5) By publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in such other locations as the liquidator deems appropriate.

(b) Except as otherwise established by the liquidator with approval of the court, notice to potential claimants under subsection (a) shall require claimants to file with the liquidator their claims together with proper proofs thereof under Section 34 of SECTION 4 of this act, on or before a date the liquidator shall specify in the notice. The liquidator need not require persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. All claimants shall have a duty to keep the liquidator informed of any changes of address.

(c)

(1) Notice under subsection (a) to agents of the insurer and to potential claimants who are policyholders shall include, where applicable, notice that coverage by state guaranty associations may be available for all or part of policy benefits in accordance with applicable state guaranty laws.

(2) The liquidator shall promptly provide to the guaranty associations such information concerning the identities and addresses of such policyholders and their policy coverages as may be within the liquidator's possession or control, and otherwise cooperate with guaranty associations to assist them in providing to such policyholders timely notice of the guaranty associations' coverage of policy

benefits, including, as applicable, coverage of claims and continuation or termination of coverages.

(d) If notice is given in accordance with this section, the distribution of assets of the insurer under this chapter shall be conclusive with respect to all claimants, whether or not they received notice.

SECTION 22.

(a) Every person who receives notice in the form prescribed in Section 21 of SECTION 4 of this act that an insurer which he represents as an agent is the subject of a liquidation order, shall within thirty (30) days of such notice provide to the liquidator (in addition to the information he may be required to provide pursuant to Section 6 of SECTION 4 of this act) the information in the agent's records related to any policy issued by the insurer through the agent, and, if the agent is a general agent, the information in the general agent's records related to any policy issued by the insurer through an agent under contract to him, including the name and address of such sub-agent. A policy shall be deemed issued through an agent if the agent has a property interest in the expiration of the policy, or if the agent has had in his possession a copy of the declarations of the policy at any time during the life of the policy, except where the ownership of the expiration of the policy has been transferred to another.

(b) Any agent failing to provide information to the liquidator as required in subsection (a) may be subject to payment of a penalty of not more than one thousand dollars (\$1,000) and may have his licenses suspended, said penalty to be imposed after a hearing held by the commissioner.

SECTION 23.

(a) Upon issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in this state, no action at law or equity or in arbitration shall be brought against the insurer or liquidator, whether in this state or elsewhere, nor shall any such existing actions be maintained or further presented after issuance of such order. The courts of this state shall give full faith and credit to injunctions against the liquidator or

the company or the continuation of existing actions against the liquidator or the company, when such injunctions are included in an order to liquidate an insurer issued pursuant to corresponding provisions in other states. Whenever, in the liquidator's judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, he may intervene in the action. The liquidator may defend any action in which he intervenes under this section at the expense of the estate of the insurer.

(b) The liquidator may, upon or after an order for liquidation, within two (2) years or such other longer time as applicable law may permit, institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which such order is entered. Where, by any agreement, a period of limitation is fixed for instituting a suit or proceeding upon any claim, or for filing any claim, proof of claim, proof of loss, demand, notice, or the like, or where in any proceeding, judicial or otherwise, a period of limitation is fixed, either in the proceeding or by applicable law, for taking any action, filing any claim or pleading, or doing any act, and where in any such case the period had not expired at the date of the filing of the petition; the liquidator may, for the benefit of the estate, take any such action or do any such act, required of or permitted to the insurer, within a period of one hundred eighty (180) days subsequent to the entry of an order for liquidation, or within such further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

(c) No statute of limitation or defense of laches shall run with respect to any action against an insurer between the filing of a petition for liquidation against an insurer and the denial of the petition. Any action against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty (60) days after the petition is denied.

(d) Any guaranty association or foreign guaranty association shall have standing to

appear in any court proceeding concerning the liquidation of an insurer if such association is or may become liable to act as a result of the liquidation.

SECTION 24.

(a) As soon as practicable after the liquidation order but not later than one hundred twenty (120) days thereafter, the liquidator shall prepare in duplicate a list of the insurer's assets. The list shall be amended or supplemented from time to time as the liquidator may determine. One (1) copy shall be filed in the office of the Clerk of the Davidson County Chancery Court and one (1) copy shall be retained for the liquidator's files. All amendments and supplements shall be similarly filed.

(b) The liquidator shall reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation.

(c) A submission to the court for disbursement of assets in accordance with Section 32 of SECTION 4 of this act fulfills the requirements of subsection (a) of this section.

SECTION 25.

(a) Every transfer made or suffered and every obligation incurred by an insurer within one (1) year prior to the filing of a successful petition for rehabilitation or liquidation under SECTION 4 of this act is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay or defraud either existing or future creditors. A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under SECTION 4 of this act, which is fraudulent under this section, may be voided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value, and except that any purchaser, lienor or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

(b)

(1) A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee under Section 27(c) of SECTION 4 of this act.

(2) A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(3) A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.

(4) Any transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

(5) The provisions of this subsection apply whether or not there are or were creditors who might have obtained any liens or persons who might have become bona fide purchasers.

(c) Any transaction of the insurer with a reinsurer shall be deemed fraudulent and may be avoided by the receiver under subsection (a) if:

(1) The transaction consists of the termination, adjustment or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transactions, unless the reinsurer gives a present fair equivalent value for the release; and

(2) Any part of the transaction took place within one (1) year prior to the date of filing of the petition through which the receivership was commenced.

(d) Every person receiving any property from the insurer or any benefit thereof which is a fraudulent transfer under subsection (a) shall be personally liable therefor and shall be bound to account to the liquidator.

SECTION 26.

(a) After a petition for rehabilitation or liquidation has been filed, a transfer of any of the real property of the insurer made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value; or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred. The commencement of a proceeding in rehabilitation or liquidation shall be constructive notice upon the recording of a copy of the petition for or order of rehabilitation or liquidation with the recorder of deeds in the county where any real property in question is located. The exercise by a court of the United States or any state or jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state shall not be impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

(b) After a petition for rehabilitation or liquidation has been filed and before either the receiver takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted:

(1) A transfer of any of the property of the insurer, other than real property, made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value; or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred.

(2) A person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property, or any part thereof, to the insurer or upon his order,

with the same effect as if the petition were not pending.

(3) A person having actual knowledge of the pending rehabilitation or liquidation shall be deemed not to act in good faith.

(4) A person asserting the validity of a transfer under this section shall have the burden of proof. Except as elsewhere provided in this section, no transfer by or on behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator shall be valid against the liquidator.

(c) Every person receiving any property from the insurer or any benefit thereof which is a fraudulent transfer under subsection (a) shall be personally liable therefor and shall be bound to account to the liquidator.

(d) Nothing in SECTION 4 of this act shall impair the negotiability of currency or negotiable instruments.

SECTION 27.

(a)

(1) A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within one (1) year before the filing of a successful petition for liquidation under SECTION 4 of this act, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then such transfers shall be deemed preferences if made or suffered within one (1) year before the filing of the successful petition for rehabilitation, or within two (2) years before the filing of the successful petition for liquidation, whichever time is shorter.

(2) Any preference may be avoided by the liquidator if:

(A) The insurer was insolvent at the time of the transfer; or

(B) The transfer was made within four (4) months before the filing of the petition; or

(C) The creditor receiving it or to be benefited thereby or his agent acting with reference thereto had, at the time when the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or

(D) The creditor receiving it was an officer, or any employee or attorney or other person who was in fact in a position of comparable influence in the insurer to an officer whether or not he held such position, or any shareholder holding directly or indirectly more than five percent (5%) of any class of any equity security issued by the insurer, or any other person, firm, corporation, association, or aggregation of persons with whom the insurer did not deal at arm's length.

(3) Where the preference is voidable, the liquidator may recover the property or, if it has been converted, its value from any person who has received or converted the property; except where a bona fide purchaser or lienor has given less than fair equivalent value, he shall have a lien upon the property to the extent of the consideration actually given by him. Where a preference by way of lien or security title is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

(b)

(1) A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee.

(2) A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(3) A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.

(4) A transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

(5) The provisions of this subsection apply whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

(c)

(1) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of such proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

(2) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee within the meaning of subsection (b), if such consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. Such a lien could not, however, become superior and such a purchase could not create superior rights for the purpose of subsection (b) through any acts subsequent to the obtaining of such a lien or

subsequent to such a purchase which require the agreement or concurrence of any third party or which require any further judicial action or ruling.

(d) A transfer of property for or on account of a new and contemporaneous consideration which is deemed under subsection (b) to be made or suffered after the transfer because of delay in perfecting it does not thereby become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers, rights are performed within twenty-one (21) days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if such a loan is actually made, or a transfer which becomes security for a future loan, shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

(e) If any lien deemed voidable under subsection (a)(2) has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition under SECTION 4 of this act which results in a liquidation order, the indemnifying transfer or lien shall also be deemed voidable.

(f) The property affected by any lien deemed voidable under subsections (a) and (e) shall be discharged from such lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator, except that the court may on due notice order any such lien to be preserved for the benefit of the estate and the court may direct that such conveyance be executed as may be proper or adequate to evidence the title of the liquidator.

(g) The Davidson County Chancery Court shall have summary jurisdiction of any proceeding by the liquidator to hear and determine the rights of any parties under this section. Reasonable notice of any hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for

the avoidance of an indemnifying lien, the court, upon application of any party in interest, shall in the same proceeding ascertain the value of the property or lien, and if the value is less than the amount for which the property is indemnity or than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator, within such reasonable times as the court shall fix.

(h) The liability of the surety under a releasing bond or other like obligation shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator, or where the property is retained under subsection (g) to the extent of the amount paid to the liquidator.

(i) If a creditor has been preferred, and afterward in good faith gives the insurer further credit without security of any kind, for property which becomes a part of the insurer's estate, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from him.

(j) If an insurer shall, directly or indirectly, within four (4) months before the filing of a successful petition for liquidation under SECTION 4 of this act, or at any time in contemplation of a proceeding to liquidate it, pay money or transfer property to an attorney-at-law for services rendered or to be rendered, the transactions may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator and shall be held valid only to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the liquidator for the benefits of the estate provided that where the attorney is in a position of influence in the insurer or an affiliate thereof payment of any money or the transfer of any property to the attorney-at-law for services rendered or to be rendered shall be governed by the provision of subsection (a)(2)(D).

(k)

(1) Every officer, manager, employee, shareholder, member, subscriber, attorney or

any other person acting on behalf of the insurer who knowingly participates in giving any preference when he has reasonable cause to believe the insurer is or is about to become insolvent at the time of the preference shall be personally liable to the liquidator for the amount of the preference. It is permissible to infer that there is a reasonable cause to so believe if the transfer was made within four (4) months before the date of filing of this successful petition for liquidation.

(2) Every person receiving any property from the insurer or the benefit thereof as a preference voidable under subsection (a) shall be personally liable therefor and shall be bound to account to the liquidator.

(3) Nothing in this subsection shall prejudice any other claim by the liquidator against any person.

SECTION 28.

(a) No claims of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment or encumbrance voidable under this act, shall be allowed unless he surrenders the preference, lien, conveyance, transfer, assignment or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not be allowed unless the money is paid or the property is delivered to the liquidator within thirty (30) days from the date of the entering of the final judgment, except that the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

(b) A claim allowable under subsection (a) by reason of the avoidance, whether voluntary or involuntary, or a preference, lien, conveyance, transfer, assignment or encumbrance, may be filed as an excused last filing under Section 34 if filed within thirty (30) days from the date of the avoidance, or within the further time allowed by the court under subsection (a).

SECTION 29.

(a) In all cases of mutual debts or mutual credits between the insurer and another person in

connection with any action or proceeding under this chapter, such credits and debts shall be set off and the balance only shall be allowed or paid, except as provided in subsection (b).

(b) No offset shall be allowed in favor of any such person where:

(1) The obligation of the insurer to such person would not at the date of the entry of any liquidation order or otherwise, as provided herein, entitle him to share as a claimant in the assets of the insurer; or

(2) The obligation of the insurer to such person was purchased by or transferred to such person with a view of its being used as a offset; or

(3) The obligation of such person is to pay an assessment levied against the subscribers of a reciprocal insurer, or is to pay a balance upon the subscription to the capital stock of a stock insurer.

SECTION 30.

(a) As soon as practicable but not more than two (2) years from the date of an order of liquidation under Section 17 of SECTION 4 of this act of an insurer issuing assessable policies, the liquidator shall make a report to the court setting forth:

(1) The reasonable value of the assets of the insurer;

(2) The insurer's probable total liabilities;

(3) The probable aggregate amount of the assessment necessary to pay all claims of creditors and expenses in full, including expenses of administration and costs of collecting the assessment; and

(4) A recommendation as to whether or not an assessment should be made and in what amount.

(b)

(1) Upon the basis of the report provided in subsection (a), including any

supplements and amendments thereto, the Davidson County Chancery Court may levy one or more assessments against all members of the insurer who are subject to assessment.

(2) Subject to any applicable legal limits on assessability, the aggregate assessment shall be for the amount that the sum of the probable liabilities, the expenses of administration, and the estimated cost of collection of the assessment, exceeds the value of existing assets, with due regard being given to assessments that cannot be collected economically.

(c) After levy of assessment under subsection (b), the liquidator shall issue an order directing each member who has not paid the assessment pursuant to the order, to show cause why the liquidator should not pursue a judgment therefor.

(d) The liquidator shall give notice of the order to show cause by publication and by first class mail to each member liable thereunder mailed to his last known address as it appears on the insurer's records, at least twenty (20) days before the return day of the order to show cause.

(e)

(1) If a member does not appear and serve duly verified objections upon the liquidator on or before the return day of the order to show cause under subsection (c), the court shall make an order adjudging the member liable for the amount of the assessment against him pursuant to subsection (c), together with costs, and the liquidator shall have a judgment against the member therefor.

(2) If on or before such return day, the member appears and serves duly verified objections upon the liquidator, the commissioner may hear and determine the matter or may appoint a referee to hear it and make such order as the facts warrant. In the event that the commissioner determines that such objections do not warrant relief from assessment, the member may request the court to review the matter and vacate the order to show cause.

(f) The liquidator may enforce any order or collect any judgment under subsection (e) by any lawful means.

SECTION 31.

(a)

(1) An agent, broker, premium finance company, or any other person, other than the insured, responsible for the payment of a premium shall be obligated to pay any earned premium due the insurer at the time of the declaration of insolvency, as shown on the records of the insurer. The liquidator shall also have the right to recover from such person any part of an unearned premium that represents commission of such person. Credits or setoffs or both shall be allowed to an agent, broker, or premium finance company for any amounts advanced to the insurer by the agent, broker, or premium finance company on behalf of, but in the absence of a payment by, the insured.

(2) An insured shall be obligated to pay any unpaid earned premium due the insurer at the time of the declaration of insolvency, as shown on the records of the insurer.

(b) Upon satisfactory evidence of a violation of this section, the commissioner may pursue either one or both of the following courses of action:

(1) Suspend or revoke or refuse to renew the licenses of such offending party or parties.

(2) Impose a penalty of not more than one thousand dollars (\$1,000) for each and every act in violation of this section by said party or parties.

(c) Before the commissioner shall take any action as set forth in subsection (b), he shall give written notice to the person, company, association or exchange accused of violating the law, stating specifically the nature of the alleged violation, and fixing a time and place, at least ten (10) days thereafter, when a hearing on the matter shall be held. After such hearing, or upon failure of the accused to appear at such

hearing, the commissioner, if he shall find such violation, shall impose such of the penalties under subsection (b) as he deems advisable.

(d) When the commissioner shall take action in any or all of the ways set out in subsection (b), the party aggrieved may appeal from said action to the Davidson County Chancery Court.

(e) With respect to any policy of insurance issued or delivered in this state, the claims of an insurer declared to be insolvent under the laws of any state, or of its liquidator, receiver, statutory successor or other legal representative, against the insured or against the agent through whom the policy was written shall be subject to the following limitations:

(1) The insured shall not be liable to an insolvent insurer or its legal representative for any premium which had not been earned on a pro-rata basis as of the date the insurer was declared insolvent. In addition, the insured shall be entitled to credit against any obligation owed to the insolvent insurer or its legal representative for any unearned premium that has been paid by the insured and for which the insured has not been reimbursed by the Tennessee Insurance Guaranty Association; and

(2) The agent through whom the policy was written also shall not be liable to the insolvent insurer or its legal representative for any premiums which had not been earned on a pro-rata basis as of the date the insurer was declared insolvent. The agent shall be entitled to retain the commission due on earned premiums. The insured shall be entitled to any unearned premium that has been collected by the agent but not remitted to the insurer.

SECTION 32.

(a) Within one hundred twenty (120) days of a final determination of insolvency of an insurer by a court of competent jurisdiction of this state, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshalled assets, from time to time as such assets become available, to a guaranty association or foreign guaranty association having obligations because of such

insolvency. If the liquidator determines that there are insufficient assets to disburse, the application required by this section shall be considered satisfied by a filing by the liquidator stating the reasons for this determination.

(b) Such proposal shall at least include provisions for:

(1) Reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors, to the extent of the value of the security held, and claims falling within the priorities established in Section 40 of SECTION 4 of this act, Classes 1 and 2;

(2) Disbursement of the assets marshalled to date and subsequent disbursement of assets as they become available;

(3) Equitable allocation of disbursements to each of the guaranty associations and foreign guaranty associations entitled thereto;

(4) The securing by the liquidator from each of the associations entitled to disbursements pursuant to this section of an agreement to return to the liquidator such assets, together with income earned on assets previously disbursed, as may be required to pay claims of secured creditors and claims falling within the priorities established in Section 40 of SECTION 4 of this act in accordance with such priorities. No bond shall be required of any such association; and

(5) A full report to be made by each association to the liquidator accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on such assets and any other matter as the court may direct.

(c) The liquidator's proposal shall provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made thereby for which such associations could assert a claim against the

liquidator, and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of such claim payments made or to be made by the association then disbursements shall be in the amount of available assets.

(d) The liquidator's proposal shall, with respect to an insolvent insurer writing life or health insurance or annuities, provide for disbursements of assets to any guaranty association or any foreign guaranty association covering life or health insurance or annuities or to any other entity or organization reinsuring, assuming or guaranteeing policies or contracts of insurance under the acts creating such associations.

(e) Notice of such application shall be given to the association in and to the commissioners of insurance of each of the states. Any such notice shall be deemed to have been given when deposited in the United States certified mails, first class postage prepaid, at least thirty (30) days prior to submission of such application to the court. Action on the application may be taken by the court provided the above required notice has been given and provided further that the liquidator's proposal complies with subsections b(1) and b(2).

SECTION 33.

(a) Proof of all claims shall be filed with the liquidator in the form required by Section 34 on or before the last day for filing specified in the notice required under Section 21 of SECTION 4 of this act, except that proof of claims for cash surrender values or other investment values in life insurance and annuities need not be filed unless the liquidator expressly so requires.

(b) The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if he were not late, to the extent that any such payment will not prejudice the orderly administration of the liquidation, under the following circumstances:

(1) The existence of the claim was not known to the claimant and that he filed his claim as promptly thereafter as reasonably possible after learning of it;

(2) A transfer to a creditor was avoided under Sections 25 through 27 of SECTION 4 of this act, or was voluntarily surrendered under Section 28 of SECTION 4 of this act, and that the filing satisfies the conditions of Section 28 of SECTION 4 of this act;

(3) The valuation under Section 39 of SECTION 4 of this act, of security held by a secured creditor shows a deficiency, which is filed within thirty (30) days after the valuation; and

(c) The liquidator shall permit late filing claims to share in distributions, whether past or future, as if they were not late, if such claims are claims of a guaranty association or foreign guaranty association for reimbursement of covered claims paid or expenses incurred, or both, subsequent to the last day for filing where such payments were made and expenses incurred as provided by law.

(d) The liquidator may consider any claim filed late which is not covered by subsection (b), and permit it to receive distributions which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive, at each distribution, the same percentage of the amount allowed on his claim as is then being paid to claimants of any lower priority. This shall continue until his claim has been paid in full.

SECTION 34.

(a) Proof of claim shall consist of a statement signed by the claimant that includes all of the following that are applicable:

(1) The particulars of the claim including the consideration given for it;

(2) The identity and amount of the security on the claim;

(3) The payments made on the debt, if any;

(4) That the sum claimed is justly owing and that there is no setoff, counterclaim or defense to the claim;

(5) Any right of priority of payment or other specific right asserted by the claimants;

(6) A copy of the written instrument which is the foundation of the claim; and

(7) The name and address of the claimant and the attorney who represents him, if any.

(b) No claim need be considered or allowed if it does not contain all the information in subsection (a) which may be applicable. The liquidator may require that a prescribed form be used, and may require that other information and documents be included.

(c) At any time the liquidator may request the claimant to present information or evidence supplementary to that required under subsection (a) and may take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.

(d) No judgment or order against an insured or the insurer entered after the date of filing of a successful petition for liquidation, and no judgment or order against an insured or the insurer entered at any time by default or by collusion need be considered as evidence of liability or of quantum of damages. No judgment or order against an insured or the insurer entered within four (4) months before the filing of the petition need be considered as evidence of liability or of the quantum of damages.

(e) All claims of a guaranty association or foreign guaranty association shall be in such form and contain such substantiation as may be agreed to by the association and the liquidator.

SECTION 35.

(a) The claim of a third party which is contingent only on his first obtaining a judgment against the insured shall be considered and allowed as if there were no such contingency.

(b) A claim may be allowed even if contingent, if it is filed in accordance with Section 33 of SECTION 4 of this act. It may be allowed and may participate in all distributions

declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

(c) Claims that are due except for the passage of time shall be treated as absolute claims are treated, except that such claims may be discounted at the legal rate of interest.

(d) Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of any order of rehabilitation or liquidation under Section 12 or 17 of SECTION 4 of this act.

SECTION 36.

(a) Whenever any third party asserts a cause of action against an insured of an insurer in liquidation, the third party may file a claim with the liquidator.

(b) Whether or not the third party files a claim, the insured may file a claim on his own behalf in the liquidation. If the insured fails to file a claim by the date for filing claims specified in the order of liquidation or within sixty (60) days after mailing of the notice required by Section 21 of SECTION 4 of this act, whichever is later, he is an unexcused late filer.

(c) The liquidator shall make his recommendations to the court under Section 40 of SECTION 4 of this act, for the allowance of an insured's claim under subsection (b) after consideration of the probable outcome of any pending action against the insured on which the claim is based, the probable damages recoverable in the action and the probable costs and expenses of defense. After allowance by the court, the liquidator shall withhold any dividends payable on the claim, pending the outcome of litigation and negotiation with the insured. Whenever it seems appropriate, he shall reconsider the claim on the basis of additional information and amend his recommendations to the court. The insured shall be afforded the same notice and opportunity to be heard on all changes in the recommendation as in its initial determination.

The court may amend its allowance as it thinks appropriate. As claims against the

insured are settled or barred, the insured shall be paid from the amount withheld the same percentage dividend as was paid on other claims of like property, based on the lesser of a) the amount actually recovered from the insured by action or paid by agreement plus the reasonable costs and expense of defense, or b) the amount allowed on the claims by the court. After all claims are settled or barred, any sum remaining from the amount withheld shall revert to the undistributed assets of the insurer. Delay in final payment under this subsection shall not be a reason for unreasonable delay of final distribution and discharge of the liquidator.

(d) If several claims founded upon one (1) policy are filed, whether by third parties or as claims by the insured under this section, and the aggregate allowed amount of the claims to which the same limit of liability in the policy is applicable exceeds that limit, each claim as allowed shall be reduced in the same proportion so that the total equals the policy limit. Claims by the insured shall be evaluated as in subsection (c). If any insured's claim is subsequently reduced under subsection (c), the amount thus freed shall be apportioned ratably among the claims which have been reduced under this subsection.

(e) No claim may be presented under this section if it is or may be covered by any guaranty association or foreign guaranty association.

SECTION 37.

(a) When a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or his attorney by first class mail at the address shown in the proof of claim. Within sixty (60) days from the mailing of the notice, the claimant may file his objections with the liquidator. If no such filing is made, the claimant may not further object to the determination.

(b) Whenever objections are filed with the liquidator and the liquidator does not alter his denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first class mail to the claimant or his attorney and to any other persons

directly affected, not less than ten (10) nor more than thirty (30) days before the date of the hearing. The matter may be heard by the court or by a court-appointed referee who shall submit findings of fact along with his recommendation.

SECTION 38. Whenever a creditor whose claim against an insurer is secured, in whole or in part, by the undertaking of another person, fails to prove and file that claim, the other person may do so in the creditor's name, and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name, to the extent that he discharges the undertaking. In the absence of an agreement with the creditor to the contrary, the other person shall not be entitled to any distribution; however, until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equals the amount of the entire claim of the creditor. Any excess received by the creditor shall be held by him in trust for such other person, the term "other person", as used in this section is not intended to apply to a guaranty association or foreign guaranty association.

SECTION 39.

(a) The value of any security held by a secured creditor shall be determined in one (1) of the following ways, as the court may direct:

(1) By converting the same into money according to the terms of the agreement pursuant to which the security was delivered to such creditors; or

(2) By agreement, arbitration, compromise or litigation between the creditor and the liquidator.

(b) The determination shall be under the supervision and control of the court with due regard for the recommendation of the liquidator. The amount so determined shall be credited upon the secured claim, and any deficiency shall be treated as an unsecured claim. If the claimant shall surrender his security to the liquidator, the entire claim shall be allowed as if unsecured.

SECTION 40. The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is herein set forth. Every claim in each class

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shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class. The order of distribution of claims shall be:

(a) Class 1. The costs and expenses of administration during rehabilitation and liquidation, including but not limited to the following:

(1) The actual and necessary costs of preserving or recovering the assets of the insurer;

(2) Compensation for all authorized services rendered in the rehabilitation and liquidation;

(3) Any necessary filing fees;

(4) The fees and mileage payable to witnesses;

(5) Authorized reasonable attorney's fees and other professional services rendered in the rehabilitation and liquidation;

(6) The reasonable expenses of a guaranty association or foreign guaranty association for unallocated loss adjustment expenses.

(b) Class 2. Reasonable compensation to employees for services performed to the extent that they do not exceed two (2) months of monetary compensation and represent payment for services performed within one (1) year before the filing of the petition for liquidation or, if rehabilitation preceded liquidation, within one (1) year before the filing of the petition for rehabilitation. Principal officers and directors shall not be entitled to the benefit of this priority except as otherwise approved by the liquidator and the court. Such priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.

(c) Class 3. All claims under policies including such claims of the federal or any state or local government for losses incurred, ("loss claims") including third party claims and all

claims of a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligation of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to his employee shall be treated as a gratuity.

(d) Class 4. Claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors including claims of ceding and assuming companies in their capacity as such.

(e) Class 5. Claims of the federal or any state or local government except those under Class 3 above. Claims including those of any governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under subsection (h).

(f) Class 6. Claims filed late or any other claims other than claims under subsections (g) and (h).

(g) Class 7. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited in accordance with law.

(h) Class 8. The claims of shareholders or other owners in their capacity as shareholders.

SECTION 41.

(a) The liquidator shall review all claims duly filed in the liquidation and shall make such further investigation as he shall deem necessary. He may compound, compromise or in any other manner negotiate the amount for which claims will be recommended to the court except

where the liquidator is required by law to accept claims as settled by any person or organization, including any guaranty association or foreign guaranty association. Unresolved disputes shall be determined under Section 37 of SECTION 4 of this act. As soon as practicable, he shall present to the court a report of the claims against the insurer with his recommendations. The report shall include the name and address of each claimant and the amount of the claim finally recommended, if any. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment value and the amounts owed.

(b) The court may approve, disapprove or modify the report on claims by the liquidator. Such reports as are not modified by the court within a period of sixty (60) days following submission by the liquidator shall be treated by the liquidator as allowed claims, subject thereafter to later modification or to rulings made by the court pursuant to Section 37 of SECTION 4 of this act. No claim under a policy of insurance shall be allowed for an amount in excess of the applicable policy limits.

SECTION 42. Under the direction of the court, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

SECTION 43.

(a) All unclaimed funds subject to distribution remaining in the liquidator's hands when he is ready to apply to the court for discharge, including the amount distributable to any creditor, shareholder, member or other person who is unknown or cannot be found, shall be deposited with the state treasurer, and shall be paid without interest except in accordance with Section 41 to the person entitled thereto or his legal representative upon proof satisfactory to the state treasurer of his right thereto. Any amount on deposit not claimed within six (6) years from the discharge of the liquidator shall

be deemed to have been abandoned and shall be escheated without formal escheat proceedings and be deposited with the general fund.

(b) All funds withheld under Section 35 of SECTION 4 of this act and not distributed shall upon discharge of the liquidator be deposited with the state treasurer and paid by him in accordance with Section 40 of SECTION 4 of this act. Any sums remaining which under Section 40 of SECTION 4 of this act would revert to the undistributed assets of the insurer shall be transferred to the state treasurer and become the property of the state under subsection (a), unless the commissioner in his discretion petitions the court to reopen the liquidation under Section 45 of SECTION 4 of this act.

SECTION 44.

(a) When all assets justifying the expense of collection and distribution have been collected and distributed under SECTION 4 of this act, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer any remaining funds that are uneconomic to distribute, as may be deemed appropriate.

(b) Any other person may apply to the court at any time for an order under subsection (a). If the application is denied, the applicant shall pay the costs and expenses of the liquidator in resisting the application, including a reasonable attorney's fee.

SECTION 45. After the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may at any time petition the Davidson County Chancery Court to reopen the proceedings for good cause, including the discovery of additional assets. If the court is satisfied that there is justification for reopening, it shall so order.

SECTION 46. Whenever it shall appear to the commissioner that the records of any insurer in process of liquidation or completely liquidated are no longer useful, he may recommend to the court and the court shall direct what records should be retained for future reference and what should be destroyed.

SECTION 47. The Davidson County Chancery Court may, as it deems desirable, cause audits to be made of

the books of the commissioner relating to any receivership established under this act, and a report of each audit shall be filed with the commissioner and with the court. The books, records and other documents of the receivership shall be made available to the auditor at any time without notice. The expense of each audit shall be considered a cost of administration of the receivership.

ARTICLE IV. INTERSTATE RELATIONS

SECTION 48.

(a) If a domiciliary liquidator has not been appointed, the commissioner may apply to the Davidson County Chancery Court by verified petition for an order directing him to act as conservator to conserve the property of an alien insurer not domiciled in this state or a foreign insurer on any one or more of the following grounds:

(1) Any of the grounds in Section 11 of SECTION 4 of this act;

(2) That any of its property has been sequestered by official action in its domiciliary state, or in any other state;

(3) That enough of its property has been sequestered in a foreign country to give reasonable cause to fear that the insurer is or may become insolvent;

(4)

(A) That its certificate of authority to do business in this state has been revoked or that none was ever issued; and

(B) That there are residents of this state with outstanding claims or outstanding policies.

(b) When an order is sought under subsection (a), the court shall cause the insurer to be given such notice and time to respond thereto as is reasonable under the circumstances.

(c) The court may issue the order in whatever terms it shall deem appropriate. The

filing or recording of the order with the Clerk of Davidson County Chancery Court or the recorder of deeds of the county in which the principal business of the company is located, shall impart the same notice as a deed, bill of sale or other evidence of title duly filed or recorded with that recorder of deeds would have imparted.

(d) The conservator may at any time petition for and the court may grant an order under Section 49 of SECTION 4 of this act to liquidate assets of a foreign or alien insurer under conservation, or, if appropriate, for an order under Section 51 of SECTION 4 of this act, to be appointed ancillary receiver.

(e) The conservator may at any time petition the court for an order terminating conservation of an insurer. If the court finds that the conservation is no longer necessary, it shall order that the insurer be restored to possession of its property and the control of its business. The court may also make such finding and issue such order at any time upon motion of any interested party, but if such motion is denied all costs shall be assessed against such party.

SECTION 49.

(a) If no domiciliary receiver has been appointed, the commissioner may apply to the Davidson County Chancery Court by verified petition for an order directing him to liquidate the assets found in this state of a foreign insurer or an alien insurer not domiciled in this state, on any of the following grounds:

(1) Any of the grounds in Section 11 or 16 of SECTION 4 of this act; or

(2) Any of the grounds specified in Section 48(a)(2) through (4) of SECTION 4 of this act.

(b) When an order is sought under subsection (a), the court shall cause the insurer to be given such notice and time to respond thereto as is reasonable under the circumstances.

(c) If it shall appear to the court that the best interests of creditors, policyholders and the public require, the court may issue an order to liquidate in whatever terms it shall deem appropriate. The filing or recording of the

order with the Clerk of the Davidson County Chancery Court or the recorder of deeds of the county in which the principal business of the company is located or the county in which its principal office or place of business is located, shall impart the same notice as a deed, bill of sale or other evidence of title duly filed or recorded with that recorder of deeds would have imparted.

(d) If a domiciliary liquidator is appointed in a reciprocal state while a liquidation is proceeding under this section, the liquidator under this section shall thereafter act as ancillary receiver under Section 51 of SECTION 4 of this act. If a domiciliary liquidator is appointed in a nonreciprocal state while a liquidation is proceeding under this section, the liquidator under this section may petition the court for permission to act as ancillary receiver under Section 51 of SECTION 4 of this act.

(e) On the same grounds as are specified in subsection (a), the commissioner may petition any appropriate federal district court to be appointed receiver to liquidate that portion of the insurer's assets and business over which the court will exercise jurisdiction, or any lesser part thereof that the commissioner deems desirable for the protection of the policyholders and creditors in this state.

(f). The court may order the commissioner, when he has liquidated the assets of a foreign or alien insurer under this section, to pay claims of residents of this state against the insurer under such rules as to the liquidation of insurers under SECTION 4 of this act as are otherwise compatible with the provisions of this section.

SECTION 50.

(a) The domiciliary liquidator of an insurer domiciled in a reciprocal state shall, except as to special deposits and security on secured claims under Section 51(c) of SECTION 4 of this act, be vested by operation of law with the title to all of the assets, property, contracts and rights of action, agents, balances, and all of the books, accounts and other records of the insurer located in this state. The date of vesting shall be the date of the filing of the petition, if that date is specified by the

domiciliary law for the vesting of property in the domiciliary state. Otherwise, the date of vesting shall be the date of entry of the order directing possession to be taken. The domiciliary liquidator shall have the immediate right to recover balances due from agents and to obtain possession of the books, accounts and other records of the insurer located in this state. He also shall have the right to recover all other assets of the insurer located in this state, subject to Section 51 of SECTION 4 of this act.

(b) If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the commissioner of this state shall be vested by operation of law with the title to all of the property, contracts and right of action, and all of the books, accounts and other records of the insurer located in this state, at the same time that the domiciliary liquidator is vested with title in the domicile. The commissioner of this state may petition for a conservation or liquidation order under Section 48 or 49 of SECTION 4 of this act, or for an ancillary receivership under Section 51 of SECTION 4 of this act, or after approval by the Davidson County Chancery Court may transfer title to the domiciliary liquidator, as the interests of justice and the equitable distribution of the assets require.

(c) Claimants residing in this state may file claims with the liquidator or ancillary receiver, if any, in this state or with the domiciliary liquidator, if the domiciliary law permits. The claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceedings.

SECTION 51.

(a) If a domiciliary liquidator has been appointed for an insurer not domiciled in this state, the commissioner may file a petition with the Davidson County Chancery Court requesting appointment as ancillary receiver in this state:

(1) If he finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver;

(2) If the protection of creditors or policyholders in this state so requires.

(b) The court may issue an order appointing an ancillary receiver in whatever terms it shall deem appropriate. The filing or recording of the order with the recorder of deeds in this state imparts the same notice as a deed, bill of sale or other evidence of title duly filed or recorded with that recorder of deeds.

(c) When a domiciliary liquidator has been appointed in a reciprocal state, then the ancillary receiver appointed in this state may, whenever necessary, aid and assist the domiciliary liquidator in recovering assets of the insurer located in this state. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. He shall promptly transfer all remaining assets, books, accounts and records to the domiciliary liquidator. Subject to this section, the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this state.

(d) When a domiciliary liquidator has been appointed in this state, ancillary receivers appointed in reciprocal states shall have, as to assets and books, accounts, and other records in their respective states, corresponding rights, duties and powers to those provided in subsection (c) for ancillary receivers appointed in this state.

SECTION 52. The commissioner in his sole discretion may institute proceedings under Sections 9 through 10 of SECTION 4 of this act at the request of the commissioner or other appropriate insurance official of the domiciliary state of any foreign or alien insurer having property located in this state.

SECTION 53.

(a) In a liquidation proceeding begun in this state against an insurer domiciled in this state, claimants residing in foreign countries or in states not reciprocal states must file claims in this state, and claimants residing in

reciprocal states may file claims either with the ancillary receivers, if any, in their respective states, or with the domiciliary liquidator. Claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceeding.

(b) Claims belonging to claimants residing in reciprocal states may be proved either in the liquidation proceeding in this state as provided in SECTION 4 of this act, or in ancillary proceedings, if any, in the reciprocal states. If notice of the claims and opportunity to appear and be heard is afforded the domiciliary liquidator of this state as provided in Section 54(b) of SECTION 4 of this act with respect to ancillary proceedings, the final allowance of claims by the courts in ancillary proceedings in reciprocal states shall be conclusive as to amount and as to priority against special deposits or other security located in such ancillary states, but shall not be conclusive with respect to priorities against general assets under Section 41 of SECTION 4 of this act.

SECTION 54.

(a) In a liquidation proceeding in a reciprocal state against an insurer domiciled in that state, claimants against the insurer who reside within this state may file claims either with the ancillary receiver, if any, in this state, or with the domiciliary liquidator. Claims must be filed on or before the last dates fixed for the filing of claims in the domiciliary liquidation proceeding.

(b) Claims belonging to claimants residing in this state may be proved either in the domiciliary state under the law of that state, or in ancillary proceedings, if any, in this state. If a claimant elects to prove his claim in this state, he shall file his claim with the liquidator in the manner provided in Sections 33 and 34 of SECTION 4 of this act. The ancillary receiver shall make his recommendation to the court as under Section 41 of SECTION 4 of this act. He shall also arrange a date for hearing if necessary under Section 37 of SECTION 4 of this act and shall give notice to the liquidator in the domiciliary state, either by certified mail or by personal service at least forty (40) days prior to the date set for hearing. If the domiciliary liquidator, within thirty (30) days

after the giving of such notice, gives notice in writing to the ancillary receiver and to the claimant, either by certified mail or by personal service, of his intention to contest the claim, he shall be entitled to appear or to be represented in any proceeding in this state involving the adjudication of the claim.

(c) The final allowance of the claim by the courts of this state shall be accepted as conclusive as to amount and as to priority against special deposits or other security located in this state.

SECTION 55. During the pendency in this or any other state of a liquidation proceeding, whether called by that name or not, no action or proceeding in the nature of an attachment, garnishment or levy of execution shall be commenced or maintained in this state against the delinquent insurer or its assets.

SECTION 56.

(a) In a liquidation proceeding in this state involving one (1) or more reciprocal states, the order of distribution of the domiciliary state shall control as to all claims of residents of this and reciprocal states. All claims of residents of reciprocal states shall be given equal priority of payment from general assets regardless of where such assets are located.

(b) The owners of special deposit claims against an insurer for which a liquidator is appointed in this or any other state shall be given priority against the special deposits in accordance with the statutes governing the creation and maintenance of the deposits. If there is a deficiency in any deposit, so that the claims secured by it are not fully discharged from it, the claimants may share in the general assets, but the sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

(c) The owner of a secure claim against an insurer for which a liquidator has been appointed in this or any other state may surrender his security and file his claim as a general

creditor, or the claim may be discharged by resort to the security in accordance with Section 38 of SECTION 4 of this act, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors.

SECTION 57. If an ancillary receiver in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in this state any assets within his control other than special deposits, diminished only by the expenses of the ancillary receivership, if any, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class of claims under Section 40(g) of SECTION 4 of this act.

ARTICLE V. SUPERVISION

SECTION 58. As used in Sections 58 through 67 of SECTION 4 of this act, unless the context otherwise requires:

(1) "Insurer" means and includes every person engaged as indemnitor, surety or contractor in the business of entering into contracts of insurance or of annuities as limited to:

(A) Any insurer who is doing an insurer business, or has transacted insurance in this state, and against whom claims arising from that transaction may exist now or in the future;

(B) Any fraternal benefit society which is subject to the provisions of Tennessee Code Annotated, Section 56-25-101, et seq.

(C) Any other person subject to the Insurers Rehabilitation and Liquidation Act.

(2) "Exceeded its powers" means the following conditions:

(A) The insurer has refused to permit examination of its books, papers, accounts, records or affairs by the commissioner, his or her deputies, employees or duly commissioned examiners;

(B) A domestic insurer has unlawfully removed from this state books, papers,

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accounts or records necessary for an examination of the insurer;

(C) The insurer has failed to promptly comply with the applicable financial reporting statutes or rules and departmental requests relating thereto;

(D) The insurer has neglected or refused to observe an order of the commissioner to make good, within the time prescribed by law, any prohibited deficiency in its capital, capital stock or surplus;

(E) The insurer is continuing to transact insurance or write business after its license has been revoked or suspended by the commissioner;

(F) The insurer, by contract or otherwise, has unlawfully or has in violation of an order of the commissioner or has without first having obtained written approval of the commissioner if approval is required by law:

(i) Totally reinsured its entire outstanding business, or

(ii) Merged or consolidated substantially its entire property or business with another insurer.

(G) The insurer engaged in any transaction in which it is not authorized to engage under the laws of this state;

(H) The insurer refused to comply with a lawful order of the commissioner.

(3) "Consent" means agreement to administrative supervision by the insurer.

(4) "Department" means the department of commerce and insurance.

SECTION 59. The provisions of SECTION 4 of this act shall apply to:

(a) All domestic insurers; and

(b) Any other insurer doing business in this state whose state of domicile has asked the commissioner to apply the provisions of SECTION 4 of this act as regards such insurer.

SECTION 60.

(a) An insurer may be subject to administrative supervision by the commissioner if upon examination or at any other time it appears in the commissioner's discretion that:

(1) The insurer's condition renders the continuance of its business hazardous to the public or to its insureds;

(2) The insurer has exceeded its powers granted under its certificate of authority and applicable law;

(3) The insurer has failed to comply with the applicable provisions of the insurance code;

(4) The business of the insurer is being conducted fraudulently; or

(5) The insurer gives its consent.

(b) If the commissioner determines that the conditions set forth in subsection (a) of this section exist, the commissioner shall:

(1) Notify the insurer of his or her determination;

(2) Furnish to the insurer a written list of the requirements to abate this determination; and

(3) Notify the insurer that it is under the supervision of the commissioner and that the commissioner is applying and effectuating the provisions of Sections 58 through 67 of SECTION 4 of this act. Such action by the commissioner shall be subject to review pursuant to applicable state administrative procedures under the Uniform Administrative Procedures Act.

(c) If placed under administrative supervision, the insurer shall have sixty (60) days, or another period of time as designated by the commissioner, to comply with the requirements of the commissioner subject to the provisions of SECTION 4 of this act.

(d) If it is determined after notice and hearing that the conditions giving rise to the

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supervision still exist at the end of the supervision period specified above, the commissioner may extend such period.

(e) If it is determined that none of the conditions giving rise to the supervision exist, the commissioner shall release the insurer from supervision.

SECTION 61.

(a) Notwithstanding any other provision of law and except as set forth in this section, proceedings, hearings, notices, correspondence, reports, records and other information in the possession of the commissioner or the department relating to the supervision of any insurer are confidential except as provided by this section.

(b) The personnel of the department shall have access to these proceedings, hearings, notices, correspondence, reports, records or information as permitted by the commissioner.

(c) The commissioner may open the proceedings or hearings or disclose the notices, correspondence, reports, records or information to a department, agency or instrumentality of this or another state or the United States if the commissioner determines that the disclosure is necessary or proper for the enforcement of the laws of this or another state of the United States.

(d) The commissioner may open the proceedings or hearings or make public the notices, correspondence, reports, records or other information if the commissioner deems that it is in the best interest of the public or in the best interest of the insurer, its insureds, creditors or the general public.

(e) This section does not apply to hearings, notices, correspondence, reports, records or other information obtained upon the appointment of a receiver for the insurer by a court of competent jurisdiction.

SECTION 62. During the period of supervision, the commissioner or his designated appointee shall serve as the administrative supervisor. The commissioner may provide that the insurer may not do any of the following things during the period of supervision, without the prior approval of the commissioner or his appointed supervisor:

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(a) Dispose of, convey or encumber any of its assets or its business in force;

(b) Withdraw any of its bank accounts;

(c) Lend any of its funds;

(d) Invest any of its funds;

(e) Transfer any of its property;

(f) Incur any debt, obligation or liability;

(g) Merge or consolidate with another company;

(h) Approve new premiums or renew any policies;

(i) Enter into any new reinsurance contract or treaty;

(j) Terminate, surrender, forfeit, convert or lapse any insurance policy, certificate or contract, except for nonpayment of premiums due;

(k) Release, pay or refund premium deposits, accrued cash or loan values, unearned premiums, or other reserves on any insurance policy, certificate or contract;

(l) Make any material change in management;
or

(m) Increase salaries and benefits of officers or directors or the preferential payment of bonuses, dividends or other payments deemed preferential.

SECTION 63. During the period of supervision the insurer may contest an action taken or proposed to be taken by the supervisor specifying the manner wherein the action being complained of would not result in improving the condition of the insurer. Denial of the insurer's request upon reconsideration entitles the insurer to request a proceeding under the Uniform Administration Procedures Act.

SECTION 64. Nothing contained in SECTION 4 of this act shall preclude the commissioner from initiating judicial proceedings to place an insurer in conservation, rehabilitation or liquidation proceedings or other delinquency proceedings, however designated under the laws of this state, regardless of

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whether the commissioner has previously initiated administrative supervision proceedings under SECTION 4 of this act against the insurer.

SECTION 65. The commissioner is empowered to adopt reasonable rules necessary for the implementation of SECTION 4 of this act.

SECTION 66. Notwithstanding any other provision of law, the commissioner may meet with a supervisor appointed under SECTION 4 of this act and with the attorney or other representative of the supervisor, without the presence of any other person, at the time of any proceeding or during the pendency of any proceeding held under authority of SECTION 4 of this act to carry out the commissioner's duties under SECTION 4 of this act or for the supervisor to carry out his or her duties under SECTION 4 of this act.

SECTION 67. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the insurance commissioner or the department or its employees or agents for any action taken by them in the performance of their powers and duties under SECTION 4 of this act.

SECTION 5. Tennessee Code Annotated, Title 56, is amended by adding the following sections as a new chapter:

SECTION 1. The provisions of this chapter shall apply to all domestic, foreign and alien insurers who are authorized to transact business in this state.

SECTION 2.

(a) Each domestic, foreign and alien insurer who is authorized to transact insurance in this state shall annually on or before March 1 of each year, file with the National Association of Insurance Commissioners (NAIC), and pay the fee established by the NAIC for filing, review or processing of the information, a copy of its annual statement convention blank, along with such additional filings as prescribed by the commissioner for the preceding year. The information filed with the National Association of Insurance Commissioners shall be in the same format and scope as that required by the commissioner and shall include the signed jurat page and the actuarial certification. Any amendments and addendums to the annual statement filing subsequently filed with the commissioner shall also be filed with the NAIC.

(b) Foreign insurers that are domiciled in a state which has a law substantially similar to subsection (a) of this section shall be deemed in compliance with this section.

SECTION 3. In the absence of actual malice, members of the NAIC, their duly authorized committees, subcommittees, and task forces, their delegates, NAIC employees, and all others charged with the responsibility of collecting, reviewing, analyzing and disseminating the information developed from the filing of the annual statement convention blanks shall be acting as agents of the commissioner under the authority of this chapter and shall not be subject to civil liability for libel, slander or any other cause of action by virtue of their collection, review, and analysis or dissemination of the data and information collected from the filings required hereunder.

SECTION 4. The commissioner may suspend, revoke or refuse to renew the certificate of authority of any insurer failing to file its annual statement when due or within any extension of time which the commissioner, for good cause, may have granted.

SECTION 6. Tennessee Code Annotated, Title 56, is amended by adding the following sections as a new chapter:

SECTION 1. The purpose of this chapter is to regulate the formation and/or operation of risk retention groups and purchasing groups in this state formed pursuant to the provisions of the federal "Liability Risk Retention Act of 1986" ("RRA 1986"), to the extent permitted by such law.

SECTION 2. As used in this chapter, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of the department of commerce and insurance or the commissioner, director or superintendent of insurance in any other state;

(2) "Completed operations liability" means liability arising out of the installation, maintenance, or repair of any product at a site which is not owned or controlled by:

(A) any person who performs that work;
or

(B) any person who hires an independent contractor to perform that work, but shall include liability for activities which are

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completed or abandoned before the date of the occurrence giving rise to the liability;

(3) "Domicile", for purposes of determining the state in which a purchasing group is domiciled, means:

(A) for a corporation, the state in which the purchasing group is incorporated; and

(B) for an unincorporated entity, the state of its principal place of business;

(4) "Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able:

(A) to meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

(B) to pay other obligations in the normal course of business;

(5) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under the laws of this state;

(6) "Liability" means:

(A) legal liability for damages (including costs of defense, legal costs and fees, and other claims expenses) because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of:

(i) any business (whether profit or nonprofit), trade, product, services (including professional services), premises, or operations; or

(ii) any activity of any state or local government, or any agency or political subdivision thereof; and

(B) does not include personal risk liability and an employer's liability with

respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. 51 et seq.);

(7) "Personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in paragraph (6);

(8) "Plan of operation or a feasibility study" means an analysis which presents the expected activities and results of a risk retention group including, at a minimum:

(A) information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations;

(B) for each state in which it intends to operate, the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer;

(C) historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available;

(D) pro forma financial statements and projections;

(E) appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;

(F) identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, investment policies or reinsurance agreements;

(G) identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each such state; and

(H) such other matters as may be prescribed by the commissioner of the state in which the risk retention group is chartered for liability insurance companies authorized by the insurance laws of that state;

(9) "Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage (including damages resulting from the loss of use of property) arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product, but does not include the liability of any person for those damages if the product involved was in the possession of such a person when the incident giving rise to the claim occurred;

(10) "Purchasing group" means any group which:

(A) has as one of its purposes the purchase of liability insurance on a group basis;

(B) purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in paragraph (C);

(C) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

(D) is domiciled in any state;

(11) "Risk retention group" means any corporation or other limited liability association:

(A) whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members;

(B) which is organized for the primary purpose of conducting the activity described under paragraph (A);

(C) which:

(i) is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or

(ii) before January 1, 1985 was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance commissioner of at least one state that it satisfied the capitalization requirements of such state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since such date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability (as such terms were defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of the Liability Risk Retention Act of 1986);

(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person;

(E) which:

(i) has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or

(ii) has as its sole owner an organization which has as:

(a) its members only persons who comprise the membership of the risk retention group; and

(b) its owners only persons who comprise the membership of the

risk retention group and who are provided insurance by such group;

(F) whose members are engaged in businesses or activities similar or related with respect to the liability of which such members are exposed by virtue of any related, similar or common business trade, product, services, premises or operations;

(G) whose activities do not include the provision of insurance other than:

(i) liability insurance for assuming and spreading all or any portion of the liability of its group members; and

(ii) reinsurance with respect to the liability of any other risk retention group (or any members of such other group) which is engaged in businesses or activities so that such group or member meets the requirement described in subdivision (F) from membership in the risk retention group which provides such reinsurance; and

(H) the name of which includes the phrase "Risk Retention Group";

(12) "State" means any state of the United States or the District of Columbia.

SECTION 3.

(a) A risk retention group shall, pursuant to the provisions of this chapter, be chartered and licensed to write only liability insurance pursuant to this chapter and, except as provided elsewhere in this chapter, must comply with all of the laws, rules, regulations and requirements applicable to such insurers chartered and licensed in this state and with Section 4 of this chapter to the extent such requirements are not a limitation on laws, rules, regulations or requirements of this state.

(b) Before it may offer insurance in any state, each risk retention group shall also submit for approval to the insurance commissioner of this state a plan of operation or feasibility study. The risk retention group shall submit an appropriate revision in the event of any subsequent material change in any item of the

plan of operation or feasibility study, within ten (10) days of any such change. The group shall not offer any additional kinds of liability insurance, in this state or in any other state, until a revision of such plan or study is approved by the commissioner.

(c) At the time of filing its application for a charter, the risk retention group shall provide to the commissioner in summary form the following information: the identity of the initial members of the group; the identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group; the amount and nature of initial capitalization; the coverages to be afforded; and the states in which the group intends to operate. Upon receipt of this information, the commissioner shall forward such information to the National Association of Insurance Commissioners. Providing notification to the National Association of Insurance Commissioners is in addition to and shall not be sufficient to satisfy the requirements of Section 4 or any other sections of this chapter.

(d) Provided, however, that this Section 3 of this chapter shall not apply to any risk retention group which was chartered and licensed in this state prior to the effective date of this chapter.

SECTION 4. Risk retention groups chartered and licensed in states other than this state and seeking to do business as a risk retention group in this state shall comply with the laws of this state as follows:

(a)

(1) Before offering insurance in this state, a risk retention group shall submit to the commissioner:

(A) a statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, charter date, its principal place of business, and such other information, including information on its membership, as the commissioner of this state may require to verify that

the risk retention group is qualified under subsection (k) of Section 2 of this chapter;

(B) a copy of its plan of operations or feasibility study and revisions of such plan or study submitted to the state in which the risk retention group is chartered and licensed; provided, however, that the provision relating to the submission of a plan of operation or feasibility study shall not apply with respect to any line or classification of liability insurance which:

(i) was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986; and

(ii) was offered before such date by any risk retention group which had been chartered and operating for not less than three (3) years before such date; and

(2) The risk retention group shall submit a copy of any revision to its plan of operation or feasibility study required by subsection (b) of Section 3 of this chapter at the same time that such revision is submitted to the commissioner of its chartering state.

(3) a statement of registration, for which a filing fee shall be determined by the commissioner, which designates the commissioner as its agent for the purpose of receiving service of legal documents or process.

(b) Any risk retention group doing business in this state shall submit to the commissioner:

(1) a copy of the group's financial statement submitted to the state in which the risk retention group is chartered and licensed which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a

qualified loss reserve specialist (under criteria established by the National Association of Insurance Commissioners);

(2) a copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination;

(3) upon request by the commissioner, a copy of any information or document pertaining to any outside audit performed with respect to the risk retention group; and

(4) such information as may be required to verify its continuing qualification as a risk retention group under item (11) of Section 2 of this chapter.

(c)

(1) Each risk retention group shall be liable for the payment of premium taxes and taxes on premiums of direct business for risks resident or located within this state, and shall report to the commissioner the net premiums written for risks resident or located within this state. Such risk retention group shall be subject to taxation, and any applicable fines and penalties related thereto, on the same basis as a foreign admitted insurer.

(2) To the extent licensed agents or brokers are utilized pursuant to Section 12 of this chapter, they shall report to the commissioner the premiums for direct business for risks resident or located within this state which such licensees have placed with or on behalf of a risk retention group not chartered in this state.

(3) To the extent that insurance agents or brokers are utilized pursuant to Section 12 of this chapter, such agent or broker shall keep a complete and separate record of all policies procured from each such risk retention group, which record shall be open to examination by the commissioner upon request. These records shall, for each policy and each kind of insurance provided thereunder, include the following:

(A) the limit of liability;

(B) the time period covered;

(C) the effective date;

(D) the name of the risk retention group which issued the policy;

(E) the gross premium charged; and

(F) the amount of return premiums, if any.

(d) Any risk retention group, its agents and representatives shall comply with the Unfair Claims Settlement Practices Act of this state, Tennessee Code Annotated, Section 56-8-104.

(e) Any risk retention group shall comply with Tennessee Code Annotated, Section 56-8-104, regarding deceptive, false or fraudulent acts or practices. However, if the commissioner seeks an injunction regarding such conduct, the injunction must be obtained from a court of competent jurisdiction.

(f) Any risk retention group must submit to an examination by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered and licensed has not initiated an examination or does not initiate an examination within sixty (60) days after a request by the commissioner of this state. Any such examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the NAIC's examiner handbook.

(g) Every application form for insurance from a risk retention group, and every policy (on its front and declaration pages) issued by a risk retention group, shall contain in ten (10) point type the following notice:

NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

(h) The following acts by a risk retention group are hereby prohibited:

(1) The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; and

(2) The solicitation or sale of insurance by, or operation of, a risk retention group that is in hazardous financial condition or financially impaired.

(i) No risk retention group shall be allowed to do business in this state if an insurance company is directly or indirectly a member or owner of such risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.

(j) The terms of any insurance policy issued by any risk retention group shall not provide, or be construed to provide, coverage prohibited generally by statute of this state or declared unlawful by the highest court of this state whose law applies to such policy.

(k) A risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment after an examination under subsection (f) of Section 4 of this chapter.

(l) A risk retention group that violates any provision of this act will be subject to fines and penalties including revocation of its right to do business in this state, applicable to licensed insurers generally.

(m) In addition to complying with the requirements of this section, any risk retention group operating in this state prior to enactment of this act shall, within thirty (30) days after the effective date of this act, comply with the provision of paragraph (a)(1) of this section.

SECTION 5 of this chapter.

(a) No risk retention group shall be required or permitted to join or contribute financially to any insurance insolvency guaranty fund, or similar mechanism, in this state, nor shall any risk retention group, or its insureds or claimants against its insureds, receive any

benefit from any such fund for claims arising under the insurance policies issued by such risk retention group.

(b) When a purchasing group obtains insurance covering its members, risks from an insurer not authorized in this state or a risk retention group, no such risks, wherever resident or located, shall be covered by any insurance guaranty fund or similar mechanism in this state.

(c) When a purchasing group obtains insurance covering its members, risks from an authorized insurer, only risks resident or located in this state shall be covered by the state guaranty fund subject to Tennessee Code Annotated, Section 56-12-111.

(d) Notwithstanding the provisions of Tennessee Code Annotated, Section 56-41-105 to the contrary, the commissioner may require or exempt a risk retention group from participation in any mechanism established or authorized under the law of this state for the equitable apportionment among insurers of liability insurance losses and expenses incurred on policies written through such mechanism, and such risk retention group shall submit sufficient information to the commissioner to enable the commissioner to apportion on a nondiscriminatory basis the risk retention group's proportionate share of such losses and expenses.

SECTION 6. A policy of insurance issued to a risk retention group or any member of that group shall not be required to be countersigned.

SECTION 7. A purchasing group and its insurer or insurers shall be subject to all applicable laws of this state, except that a purchasing group and its insurer or insurers shall be exempt, in regard to liability insurance for the purchasing group, from any law that would:

(a) Prohibit the establishment of a purchasing group;

(b) Make it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its members, advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages or other matters;

(c) Prohibit a purchasing group or its members from purchasing insurance on a group basis described in subsection (b) of this section;

(d) Prohibit a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time;

(e) Require that a purchasing group must have a minimum number of members, common ownership or affiliation, or certain legal form;

(f) Require that a certain percentage of a purchasing group must obtain insurance on a group basis;

(g) Otherwise discriminate against a purchasing group or any of its members; or

(h) Require that any insurance policy issued to a purchasing group or any of its members be countersigned by an insurance agent or broker residing in this state.

SECTION 8.

(a) A purchasing group which intends to do business in this state shall, prior to doing business, furnish notice to the commissioner which shall:

(1) Identify the state in which the group is domiciled;

(2) Identify all other states in which the group intends to do business;

(3) Specify the lines and classifications of liability insurance which the purchasing group intends to purchase;

(4) Identify the insurance company or companies from which the group intends to purchase its insurance and the domicile of such company;

(5) Specify the method by which, and the person or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in this state;

(6) Identify the principal place of business of the group; and

(7) Provide such other information as may be required by the commissioner to verify that the purchasing group is qualified under subdivision (J) of Section 2 of this chapter.

(b) A purchasing group shall, within ten (10) days, notify the commissioner of any changes in any of the items set forth in subsection (a) of this section.

(c) The purchasing group shall register with and designate the commissioner (or other appropriate authority) as its agent solely for the purpose of receiving service of legal documents or process, for which a filing fee shall be determined by the commissioner, except that such requirements shall not apply in the case of a purchasing group which only purchases insurance that was authorized under the federal Products Liability Risk Retention Act of 1981, and:

(1) Which in any state of the United States:

(A) was domiciled before April 1, 1986; and

(B) is domiciled on and after October 27, 1986;

(2) Which:

(A) before October 27, 1986 purchased insurance from an insurance carrier licensed in any state; and

(B) since October 27, 1986 purchased its insurance from an insurance carrier licensed in any state; or

(3) Which was a purchasing group under the requirements of the Product Liability Risk Retention Act of 1981 before October 27, 1986.

(d) Each purchasing group that is required to give notice pursuant to subsection (a) of this section shall also furnish such information as may be required by the commissioner to:

(1) verify that the entity qualifies as a purchasing group;

(2) determine where the purchasing group is located; and

(3) determine appropriate tax treatment.

(e) Any purchasing group which was doing business in this state prior to the enactment of this act shall, within thirty (30) days after the effective date of this chapter, furnish notice to the commissioner pursuant to the provisions of subsection (a) of this section and furnish such information as may be required pursuant to subsections (b) and (c) of this section.

SECTION 9.

(a) A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in this state, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of this state.

(b) A purchasing group which obtains liability insurance from an approved surplus lines insurer in this state or a risk retention group shall inform each of the members of such group which have a risk resident or located in this state that such risk is not protected by an insurance insolvency guaranty fund in this state, and that such risk retention group or such insurer may not be subject to all insurance laws and regulations of this state.

(c) No purchasing group may purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole; however, coverage may provide for a deductible or self-insured retention applicable to individual members.

(d) Purchases of insurance by purchasing groups are subject to the same standards regarding aggregate limits which are applicable to all purchases of group insurance.

SECTION 10. Premium taxes and taxes on premiums paid for coverage of risks resident or located in this state by a purchasing group or any members of the purchasing groups shall be:

(a) Imposed at the same rate and subject to the same interest, fines and penalties as that applicable to premium taxes and taxes on premiums paid for similar coverage from a similar insurance source by other insureds; and

(b) Paid first by such insurance source, and if not by such source by the agent or broker for the purchasing group, and if not by such agent or broker then by the purchasing group, and if not by such purchasing group then by each of its members.

SECTION 11. The commissioner is authorized to make use of any of the powers established under the insurance code of this state to enforce the laws of this state not specifically preempted by the Risk Retention Act of 1986 including the commissioner's administrative authority to investigate, issue subpoena, conduct depositions and hearings, issue orders, impose penalties and seek injunctive relief. With regard to any investigation, administrative proceedings or litigation, the commissioner can rely on the procedural laws of this state. The injunctive authority of the commissioner, in regard to risk retention groups, is restricted by the requirement that any injunction be issued by a court of competent jurisdiction.

SECTION 12.

(a) No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance in this state from a risk retention group unless such person, firm, association or corporation is licensed as an insurance agent or broker in accordance with the provision of Title 56, Chapter 6.

(b)

(1) No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance in this state for a purchasing group from an authorized insurer or a risk retention group chartered in a state unless such person, firm, association or corporation is licensed as an insurance agent or broker in accordance with the provisions of Title 56, Chapter 6.

(2) No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance coverage in this state for any member of a purchasing group under a purchasing group's policy unless such person, firm, association or corporation is licensed as an insurance agent or broker in accordance with Title 56, Chapter 6.

(3) No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance from an approved surplus lines insurer on behalf of a purchasing group located in this state unless such person, firm, association or corporation is licensed as surplus lines agent or excess line broker in accordance with Title 56, Chapter 14.

(c) For purposes of acting as an agent or broker for a risk retention group or purchasing group pursuant to subsections (a) and (b) of this section, the requirement of residence in this state shall not apply.

(d) Every person, firm, association or corporation licensed pursuant to the provisions of Title 56, Chapter 6, on business placed with risk retention groups or written through a purchasing group, shall inform each prospective insured of the provisions of the notice required by subsection (f) of Section 4 of this chapter in the case of a risk retention group and subsection (c) of Section 9 of this chapter in the case of a purchasing group.

SECTION 13. An order issued by any district court of the United States enjoining a risk retention group from soliciting or selling insurance, or operating in any state (or in all states or in any territory or possession of the United States) upon a finding that such a group is in hazardous financial or financially impaired condition shall be enforceable in the courts of the state.

SECTION 14. The commissioner is authorized to promulgate and from time to time amend such rules and regulations relating to risk retention groups as may be necessary or desirable to carry out the provisions of SECTION 9 of this act. All such rules and regulations shall be promulgated in accordance with

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the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 7. Tennessee Code Annotated, Title 56, Chapter 6, is amended by adding the following sections as a new part:

SECTION 1. The provisions of this part shall be known and may be cited as the "Managing General Agents Act".

SECTION 2. As used in this section, unless the context otherwise requires:

(1) "Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

(2) "Insurer" means any person, firm, association or corporation duly licensed in this state as an insurance company pursuant to Tennessee Code Annotated, Section 56-2-102.

(3) "Managing general agent" (MGA) means any person, firm, association or corporation who negotiates and binds ceding reinsurance contracts on behalf of an insurer or manages all or part of the insurance business of an insurer (including the management of a separate division, department or underwriting office) and acts as an agent for such insurer whether known as a managing general agent, manager or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five percent (5%) of the total policyholder surplus as reported in the last annual statement of the insurer in any one (1) quarter or year together with one (1) or more of the following:

(A) adjusts or pays claims in excess of an amount determined by rule by the Commissioner; or

(B) negotiates reinsurance on behalf of the insurer.

Notwithstanding the above, the following persons shall not be considered as MGAs for the purposes of this part:

(A) An employee of the insurer;

(B) A U. S. Manager of the United States branch of an alien insurer;

(C) An underwriting manager which, pursuant to contract, manages all the insurance operations of the insurer, is under common control with the insurer, subject to the holding company regulatory act, and whose compensation is not based on the volume of premiums written.

(4) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

SECTION 3.

(a) No person shall act in the capacity of an MGA with respect to risks located in this state for an insurer licensed in this state unless such person is a licensed insurance agent in this state.

(b) No person shall act in the capacity of an MGA representing an insurer domiciled in this state with respect to risks located outside this state unless such person is a licensed insurance agent in this state (such license may be a nonresident license) pursuant to the provisions of this part.

(c) The commissioner may require a bond in an amount acceptable to him for the protection of the insurer.

(d) The commissioner may require the MGA to maintain an errors and omissions policy.

SECTION 4. No person, firm, association or corporation acting in the capacity of an MGA shall place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party and where both parties share responsibility for a particular function, specifies the division of such responsibilities, and which contains the following minimum provisions:

(a) The insurer may terminate the contract for cause upon written notice to the MGA. The insurer may suspend the underwriting authority of the MGA during the pendency of any dispute regarding the cause for termination.

(b) The MGA will render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.

(c) All funds collected for the account of an insurer will be held by the MGA in a fiduciary capacity in a bank which is a member of the federal reserve system or is a state bank covered by federal deposit insurance. This account shall be used for all payments on behalf of the insurer. The MGA may retain no more than three (3) months estimated claims payments and allocated loss adjustment expenses.

(d) Separate records of business written by the MGA will be maintained. The insurer shall have access and right to copy all accounts and records related to its business in a form usable by the insurer and the commissioner shall have access to all books, bank accounts and records of the MGA in a form usable to the commissioner. Such records shall be retained according to Tennessee Code Annotated, Section 56-6-154.

(e) The contract may not be assigned in whole or part by the MGA.

(f) Appropriate underwriting guidelines including:

- (1) The maximum annual premium volume;
- (2) The basis of the rates to be charged;
- (3) The types of risks which may be written;
- (4) Maximum limits of liability;
- (5) Applicable exclusions;
- (6) Territorial limitations;
- (7) Policy cancellation provisions; and
- (8) The maximum policy period.

The insurer shall have the right to cancel or non-renew any policy of insurance subject to the applicable laws and regulations concerning the cancellation and non-renewal of insurance policies.

(g) If the contract permits the MGA to settle claims on behalf of the insurer:

(1) All claims must be reported to the company in a timely manner.

(2) A copy of the claim file will be sent to the insurer at its request or as soon as it becomes known that the claim:

(A) Has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the company; whichever is less;

(B) Involves a coverage dispute;

(C) May exceed the MGA's claims settlement authority;

(D) Is open for more than six (6) months; or

(E) Is closed by payment of an amount set by the commissioner or an amount set by the company, whichever is less.

(3) All claim files will be the joint property of the insurer and MGA. However, upon an order of liquidation of the insurer such files shall become the sole property of the insurer or its estate; the MGA shall have reasonable access to and the right to copy the files on a timely basis.

(4) Any settlement authority granted to the MGA may be terminated for cause upon the insurer's written notice to the MGA or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

(h) Where electronic claims files are in existence, the contract must address the timely transmission of the data.

(i) If the contract provides for a sharing of interim profits by the MGA, and the MGA has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits will not be paid to the

MGA until one (1) year after they are earned for property insurance business and five (5) years after they are earned on casualty business and not until the profits have been verified pursuant to Section 5 of this part.

(j) The MGA shall not:

(1) Bind reinsurance or retrocessions on behalf of the insurer, except that the MGA may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules;

(2) Commit the insurer to participate in insurance or reinsurance syndicates;

(3) Appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which he is appointed;

(4) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one percent (1%) of the insurer's policyholder's surplus as of December 31 of the last completed calendar year;

(5) Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded to the insurer; or

(6) Permit its subproducer to serve on the insurer's board of directors;

(7) Jointly employ an individual who is employed with the insurer; or

(8) Appoint a sub-MGA.

SECTION 5.

(a) The insurer shall have on file an independent financial examination, in a form acceptable to the commissioner, of each MGA with which it has done business.

(b) If an MGA establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the MGA. This is in addition to any other required loss reserve certification.

(c) The insurer shall periodically (at least semi-annually) conduct an on-site review of the underwriting and claims processing operations of the MGA.

(d) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who shall not be affiliated with the MGA.

(e) Within thirty (30) days of entering into or termination of a contract with an MGA, the insurer shall provide written notification of such appointment or termination to the commissioner. Notices of appointment of an MGA shall include a statement of duties which the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and any other information the commissioner may request.

(f) An insurer shall review its books and records each quarter to determine if any producer as defined by Section 2(c) of this part has become, by operation of Section 2(c) of this part, a MGA as defined in that section. If the insurer determines that a producer has become a MGA pursuant to the above, the insurer shall promptly notify the producer and the commissioner of such determination and the insurer and producer must fully comply with the provisions of this act within thirty (30) days.

(g) An insurer shall not appoint to its board of directors an officer, director, employee, subproducer or controlling shareholder of its MGAs. This subsection shall not apply to relationships governed by the Insurance Holding Company Act or, if applicable, the Producer Controlled Property/Casualty Insurer Act.

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SECTION 6. The acts of the MGA are considered to be the acts of the insurer on whose behalf it is acting. An MGA may be examined as if it were the insurer.

SECTION 7.

(a) If the commissioner finds after a hearing conducted in accordance with the Uniform Administrative Procedures Act that any person has violated any provision(s) of this part, the commissioner may order:

(1) For each separate violation, a penalty in an amount of five thousand dollars (\$5,000);

(2) Revocation or suspension of the producer's license; and

(3) The MGA to reimburse the insurer, the rehabilitator or liquidator of the insurer for any losses incurred by the insurer caused by a violation of this act committed by the MGA.

(b) The decision, determination or order of the commissioner pursuant to subsection (a) of this section shall be subject to judicial review pursuant to the Uniform Administrative Procedures Act and state insurance law.

(c) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in the insurance law.

(d) Nothing contained in this part is intended to or shall in any manner limit or restrict the rights of policyholders, claimants and auditors.

SECTION 8. The commissioner of insurance is authorized to promulgate rules and regulations to effectuate the purposes of this part. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 9. The commissioner may waive the application of any provisions of this chapter to a particular person or arrangement if the application of such provision is not necessary to carry out the purposes of this chapter.

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SECTION 10. No insurer may continue to utilize the services of an MGA on and after July 1, 1991, unless such utilization is in compliance with this part.

SECTION 8. Tennessee Code Annotated, Title 56, Chapter 6, is amended by adding the following new sections as a new part:

SECTION 1. The provisions of this part shall be known and may be cited as the "Business Transacted with Producer Controlled Property/Casualty Insurer Act".

SECTION 2. As used in this part, unless the context otherwise requires:

(1) "Control" or "controlled" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a contract for goods or nonmanagement services, or otherwise. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the powers to vote, or holds proxies representing a majority of the outstanding voting securities of any other person. No person shall be deemed to control another person solely by reason of being an officer or director of such other person. The commissioner may determine upon application that any person does not or will not upon the taking of some proposed action control another person. The commissioner may prospectively revoke or modify his determination, after the notice and opportunity to be heard, whenever, in his judgment, revocation or modification is consistent with this act.

(2) "Independent casualty actuary" means a casualty actuary who is a member of the American Academy of Actuaries and who is not affiliated with, nor an employee, principal, nor the direct or indirect owner of, or in any way controlled by the insurer or producer.

(3) "Licensed property/casualty insurer" or "insurer" means any person, firm, association or corporation duly licensed to transact a property/casualty insurance business in this state and which issues policies covered by Tennessee Code Annotated, Section 56-12-101 et seq. The following, inter alia, are not licensed

property/casualty insurers for the purposes of this act:

(A) All non-admitted insurers;

(B) All risk retention groups as defined in the Superfund Amendments Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) and the Risk Retention Act, 15 U.S.C., Section 3901 et seq. (1982 & Supp. 1986) and SECTION 4 of this act known as the Tennessee Risk Retention Group Act;

(C) All residual market pools and joint underwriting authorities or associations; and

(D) All captive insurers (i.e., insurance companies owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks of member organizations and/or group members and their affiliates).

(4) "Producer" means an insurance broker or brokers or any other person, firm, association or corporation, when, for any compensation, commission or other thing of value, such person, firm, association or corporation acts or aids in any manner in soliciting, negotiating or procuring the making of any insurance contract on behalf of an insured other than himself or itself.

(6) "Reinsurance intermediary" means any person, firm, association or corporation who acts as a producer in soliciting, negotiating or procuring the making of any reinsurance contract or binder on behalf of a ceding insurer or acts as a producer in accepting any reinsurance contract or binder on behalf of an assuming insurer.

(6) "Violation" means, for purposes of this act, a finding by the commissioner that:

(A) The controlling producer did not materially comply with Section 3 of this part; or

(B) The controlled insurer, with respect to business placed by the

controlling producer, engaged in a pattern of charging premiums that were lower than those being charged by such insurer or other insurers for similar risks written during the same period and placed by noncontrolling producers. When determining whether premiums were lower than those prevailing in the market, the commissioner shall take into consideration applicable industry or actuarial standards at the time the business was written; or

(C) The controlling producer failed to maintain records, sufficient:

(i) to demonstrate that such producer's dealings with its controlled insurer were fair and equitable and in compliance with the Insurance Holding Company System Act of 1986; and

(ii) to accurately disclose the nature and details of its transactions with the controlled insurer, including such information as is necessary to support the charges or fees to the respective parties; or

(D) The controlled insurer, with respect to business placed by the controlling producer, either failed to establish or deviated from its underwriting procedures;

(E) The controlled insurer's capitalization at the time the business was placed by the controlling producer and with respect to such business was not in compliance with criteria established by the commissioner or with the insurance law or regulations; or

(F) The controlling producer or the controlled insurer failed to substantially comply with the holding company provisions of the insurance law and any rules and regulations relative thereto.

SECTION 3.

(a) No producer which has control of a licensed property/casualty insurer may directly or indirectly place business with such insurer in any transaction in which such producer, at the

time the business is placed, is acting as such on behalf of the insured for any compensation, commission or other thing of value, unless:

(1) There is a written contract between the controlling producer and the insurer, which contract has been approved by the board of directors of the insurer;

(2) Such producer, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between such producer and the controlled insurer. Such disclosure, signed by the insured, shall be retained in the underwriting file until the filing of the report on examination covering the period in which the coverage is in effect. Except that, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in his records a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the producer and that the subproducer has or will notify the insured;

(3) All funds collected for the account of the insurer by the controlling producer must be paid, net of commissions, cancellations and other adjustments, to the insurer no less often than quarterly;

(4) In addition to any other required loss reserve certification, the controlled insurer shall annually, on April 1 of each year, file with the commissioner an opinion of an independent casualty actuary (or such other independent loss reserve specialist acceptable to the commissioner) reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end (including incurred but not reported) on business placed by such producer;

(5) The controlled insurer shall annually report to the commissioner the amount of commissions paid to such producer, the percentage such amount represents of the net premiums written and comparable amounts

and percentage paid to noncontrolling producers for placements of the same kinds of insurance; and

(6) Every controlled insurer shall have an audit committee of the board of directors composed of independent directors. Prior to approval of the annual financial statement, the audit committee shall meet with management, the insurer's independent certified public accountants, and an independent casualty actuary (or such other independent loss reserve specialist acceptable to the commissioner) to review the adequacy of the insurer's loss reserves.

(b) No reinsurance intermediary which has control of an assuming insurer may directly or indirectly place business with such insurer in any transaction in which such reinsurance intermediary is acting as a broker on behalf of the ceding insurer. No reinsurance intermediary which has control of a ceding insurer may directly or indirectly accept business from such insurer in any transaction in which such reinsurance intermediary is acting as a producer on behalf of the assuming insurer. The prohibitions in this subsection shall not apply to a reinsurance intermediary which makes a full and complete written disclosure to the parties of its relationship with the assuming or ceding insurer prior to completion of the transaction.

SECTION 4.

(a)

(1) If the commissioner has reason to believe that a controlling producer has committed or is committing an act which could be determined to be a violation, as defined in item (6) of Section 2 of this part, he shall serve upon the controlling producer in the manner provided by Tennessee Code Annotated, Section 56-6-161, a statement of the charges and notice of a hearing to be conducted in accordance with the Uniform Administrative Procedures Act and state insurance law at a time not less than thirty (30) days after the service of the notice and at a place fixed in the notice.

(2) At such hearing, the commissioner must establish that the controlling producer engaged in a violation, as defined in item (6) of Section 2 of this part. The controlling producer shall have an opportunity to be heard and to present evidence rebutting the charges and to establish that the insolvency of the controlled insurer arose out of events not attributable to the violation. The decision, determination or order of the commissioner shall be subject to judicial review pursuant to the Uniform Administrative Procedures Act and state insurance law.

(3) Upon the finding, pursuant to the proceeding set forth above that the controlling producer committed a violation, as defined in item (6) of Section 2 of this part, and the controlling producer failed to establish that such violation did not substantially contribute to the insolvency, the controlling producer shall reimburse the state guaranty funds involved for all payments made for losses, loss adjustment and administrative expenses on the business placed by such producer in excess of gross earned premiums and investment income earned on premiums and loss reserves for such business.

(4) Nothing contained in Section 4 of this part shall affect the right of the commissioner to impose any other penalties provided for in the insurance law.

(5) Nothing contained in this part is intended to or shall in any manner alter or affect the rights of policyholders, claimants, creditors or other third parties.

SECTION 9. Tennessee Code Annotated, Section 56-12-413, is amended by adding the following new sentence to subsection (b):

Notwithstanding the foregoing, the Commissioner may contract, in accordance with applicable state contracting procedures, for such qualified actuaries and financial examiners as the Commissioner deems necessary due to the unavailability of qualified regular state employees to conduct a particular examination; provided, however, the compensation and per diem allowances paid to such persons shall not

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exceed those set forth in the guidelines adopted by the National Association of Insurance Commissioners.

SECTION 10. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 11. This act shall take effect July 1, 1991, the public welfare requiring it.

On motion, Amendment No. 1 was adopted.

Thereupon, Rep. Bivens moved that **House Bill No. 689**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes.	88
Noes.	0

Representatives voting aye were: Allen, Anderson, Arriola, Bell, Bittle, Bivens, Bragg, Byrd, Callicott, Chiles, Chumney, Clark, Coffey, Collier, Copeland, Crain, Cross, Curlee, Davidson, Davis (Gibson), Davis (Knox), Duer, Ferguson, Fowlkes, Givens, Gunnels, Haley, Halteman, Hargrove, Harrill, Hassell, Haun, Head, Herron, Hill, Hillis, Holcomb, Holt, Hubbard, Jackson, Johnson, Joyce, Kent, Kernell, Kisber, Knight, Liles, Love, McAfee, McDaniel, McKee, Meyer, Moore, Napier, Niceley, Nuber, Odom, Peroulas, Draper, Phillips, Pinion, Pruitt, Purcell, Rhinehart, Ridgeway, Rigsby, Rinks, Robinson (Davidson), Robinson (Hamilton), Robinson (Washington), Severance, Shirley, Sipes, Stamps, Tindell, Tullos, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Whitson, Williams (Shelby), Williams (Union), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 88.

A motion to reconsider was tabled.

CHAIR TO DEBERRY

Mr. Speaker Naifeh relinquished the Chair to Rep. DeBerry, Speaker Pro Tempore.

REGULAR CALENDAR, CONTINUED

House Bill No. 0417 -- Insurance Companies, Agents, Brokers -- Empowers certain committees to delegate authority to resolve insurance benefit disputes. Amends TCA, Title 8, Ch. 27.

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On motion, House Bill No. 417 was made to conform with Senate Bill No. 638.

On motion, **Senate Bill No. 638**, on same subject, was substituted for House Bill No. 417.

Rep. Rhinehart moved that **Senate Bill No. 638** be passed on third and final consideration.

On motion, Rep. Rhinehart withdrew Commerce Committee Amendment No. 1.

Thereupon, Rep. Rhinehart moved that **Senate Bill No. 638** be passed on third and final consideration, which motion prevailed by the following vote:

Ayes.	92
Noes.	2

Representatives voting aye were: Allen, Anderson, Arriola, Bell, Bittle, Bivens, Bragg, Byrd, Callicott, Chiles, Chumney, Clark, Coffey, Collier, Copeland, Crain, Cross, Curlee, Davidson, Davis (Cocke), Davis (Gibson), Davis (Knox), DeBerry, Dixon, Duer, Ferguson, Fowlkes, Givens, Gunnels, Haley, Halteman, Hargrove, Harrill, Hassell, Haun, Head, Herron, Hillis, Holcomb, Holt, Hubbard, Huskey, Jackson, Johnson, Jones U (Shelby), Joyce, Kent, Kernell, King, Kisber, Knight, Liles, Love, McAfee, McDaniel, McKee, Moore, Napier, Niceley, Nuber, Odom, Peroulas Draper, Phillips, Pinion, Pruitt, Purcell, Rhinehart, Ridgeway, Rigsby, Rinks, Robinson (Davidson), Robinson (Hamilton), Robinson (Washington), Severance, Shirley, Sipes, Stamps, Tindell, Tullos, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Whitson, Williams (Shelby), Williams (Union), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 92.

Representatives voting no were: Hill, Meyer -- 2.

A motion to reconsider was tabled.

***House Bill No. 0615 -- Workers' Compensation --** Requires court to approve attorney's expense fees. Amends TCA 50-6-226.

Rep. Head moved that House Bill No. 615 be reset to the Calendar for Wednesday, April 3, 1991, which motion prevailed.

House Bill No. 0837 -- Contractors -- Includes construction manager within definition of "general contractor" for licensing purposes. Amends TCA, Title 62, Ch. 6.

On motion, House Bill No. 837 was made to conform with Senate Bill No. 544.

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On motion, **Senate Bill No. 544**, on same subject, was substituted for House Bill No. 837.

Rep. Head moved that **Senate Bill No. 544** be passed on third and final consideration.

On motion, Rep. Rhinehart withdrew Commerce Committee Amendment No. 1.

Rep. Head moved to amend as follows:

Amendment No. 2

Amend Senate Bill No. 544 by amending T.C.A. 62-6-111(d)
At the end of the first sentence delete the period and add the following:

"or such work is performed by a subcontractor, employed by the contractor, who is properly licensed to perform such work as required under the Tennessee Contractor's Licensing Act T.C.A. 62-6-101, et seq."

On motion, Amendment No. 2 was adopted.

Thereupon, Rep. Head moved that **Senate Bill No. 544**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes.	92
Noes.	0

Representatives voting aye were: Allen, Anderson, Arriola, Bell, Bittle, Bivens, Bragg, Byrd, Callicott, Chiles, Chumney, Clark, Coffey, Collier, Copeland, Crain, Cross, Curlee, Davidson, Davis (Cocke), Davis (Gibson), Davis (Knox), DeBerry, Dixon, Duer, Ferguson, Fowlkes, Givens, Gunnels, Haley, Halteman, Hargrove, Harrill, Hassell, Haun, Head, Herron, Hill, Hillis, Holcomb, Holt, Hubbard, Huskey, Jackson, Johnson, Jones U (Shelby), Joyce, Kent, Kernell, Kisber, Knight, Liles, Love, McAfee, McDaniel, McKee, Meyer, Moore, Napier, Niceley, Nuber, Odom, Peroulas Draper, Phillips, Pinion, Pruitt, Purcell, Rhinehart, Ridgeway, Rigsby, Rinks, Robinson (Davidson), Robinson (Hamilton), Robinson (Washington), Severance, Shirley, Sipes, Stamps, Tindell, Tullos, Turner (Shelby), Venable, Walley, West, Whitson, Williams (Shelby), Williams (Union), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 92.

A motion to reconsider was tabled.

House Bill No. 0838 -- Contractors -- Redefines "subcontractors" for purposes of licensing requirements. Amends TCA 62-6-102.

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Rep. Head moved that House Bill No. 838 be passed on third and final consideration.

Rep. Copeland moved to amend as follows:

Amendment No. 1

Amend House Bill No. 838 by adding the following new section before the effective date section and by renumbering the effective date section accordingly:

Section _____. Tennessee Code Annotated, Section 62-6-102(1)(B), is amended by deleting subdivision (ii) in its entirety and by redesignating the subsequent subdivision accordingly.

Rep. Rhinehart moved that Amendment No. 1 be tabled, which motion prevailed by the following vote:

Ayes.	55
Noes.	33
Present and not voting.	2

Representatives voting aye were: Arriola, Bell, Bittle, Bragg, Callicott, Chiles, Chumney, Collier, Crain, Cross, Curlee, Davidson, Davis (Cocke), Davis (Gibson), Davis (Knox), DeBerry, Duer, Ferguson, Fowlkes, Givens, Gunnels, Hargrove, Harrill, Haun, Head, Herron, Hillis, Holt, Huskey, Jackson, Johnson, Jones U (Shelby), Kisber, Knight, McDaniel, Moore, Napier, Niceley, Odom, Phillips, Pinion, Purcell, Rhinehart, Ridgeway, Rigsby, Rinks, Robinson (Davidson), Robinson (Washington), Tindell, Walley, West, Windle, Winningham, Wix, Mr. Speaker Naifeh -- 55.

Representatives voting no were: Allen, Anderson, Bivens, Byrd, Clark, Copeland, Dixon, Haley, Halteman, Hassell, Hill, Holcomb, Hubbard, Joyce, Kent, Kernell, Liles, McAfee, Meyer, Nuber, Peroulas, Draper, Pruitt, Robinson (Hamilton), Severance, Sipes, Stamps, Tulos, Turner (Hamilton), Turner (Shelby), Venable, Williams (Shelby), Williams (Union), Wood -- 33.

Representatives present and not voting were: McKee, Whitson -- 2.

REQUEST TO CHANGE VOTE

MR. SPEAKER: Pursuant to Rule No. 31, I wish to express a desire to change my original stand from no to aye on the motion to table Amendment No. 1 to House Bill No. 838 and have this statement entered in the Journal.

Rep. Micheal Williams

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REQUEST TO CHANGE VOTE

MR. SPEAKER: Pursuant to Rule No. 31, I wish to express a desire to change my original stand from aye to no on the motion to table Amendment No. 1 to House Bill No. 838 and have this statement entered in the Journal.

Rep. Carol Chumney

REGULAR CALENDAR, CONTINUED

Thereupon, Rep. Head moved that House Bill No. 838 be passed on third and final consideration, which motion prevailed by the following vote:

Ayes.	85
Noes.	8

Representatives voting aye were: Allen, Anderson, Arriola, Bell, Bittle, Bivens, Bragg, Byrd, Callicott, Chiles, Chumney, Clark, Coffey, Collier, Copeland, Crain, Cross, Curlee, Davidson, Davis (Cocke), Davis (Gibson), Davis (Knox), DeBerry, Ferguson, Fowlkes, Givens, Gunnels, Haley, Halteman, Hargrove, Harrill, Hassell, Haun, Head, Herron, Hill, Hillis, Holcomb, Holt, Hubbard, Huskey, Jackson, Johnson, Joyce, Kent, Kernell, Kisber, Knight, Liles, Love, McAfee, McDaniel, Meyer, Moore, Napier, Nuber, Odom, Peroulas Draper, Phillips, Pinion, Purcell, Rhinehart, Ridgeway, Rigsby, Rinks, Robinson (Davidson), Robinson (Hamilton), Robinson (Washington), Severance, Sipes, Stamps, Tindell, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Whitson, Williams (Shelby), Williams (Union), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 85.

Representatives voting no were: Dixon, Duer, Jones U (Shelby), McKee, Niceley, Pruitt, Shirley, Tullos -- 8.

A motion to reconsider was tabled.

CHAIR TO SPEAKER

Mr. Speaker Naifeh resumed the Chair.

MESSAGE FROM THE SENATE

April 1, 1991

MR. SPEAKER: I am directed to transmit to the House, Senate Bill(s) No(s). 451; passed by the Senate.

CLYDE W. McCULLOUGH, JR.,
Chief Clerk.

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REGULAR CALENDAR, CONTINUED

House Bill No. 1049 -- Nurses, Nursing -- Exempts certain health care professionals from liability to act as jurors. Amends TCA 22-1-103.

On motion, House Bill No. 1049 was made to conform with Senate Bill No. 451.

On motion, **Senate Bill No. 451**, on same subject, was substituted for House Bill No. 1049.

Rep. Odom moved that **Senate Bill No. 451** be passed on third and final consideration.

On motion, Rep. Byrd withdrew Judiciary Committee Amendment No. 1.

Rep. Williams (Shelby) moved to amend as follows:

Amendment No. 2

Amend Senate Bill No. 451 by deleting in the amendatory language the words "confirmation that" and substituting instead the language "confirmation by the hospital administrator that".
On motion, Amendment No. 2 was adopted.

Rep. Odom moved that **Senate Bill No. 451**, as amended, be passed on third and final consideration.

Rep. Clark moved the previous question, which motion prevailed.

Thereupon, Rep. Odom moved that **Senate Bill No. 451**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes.	50
Noes.	40
Present and not voting.	3

Representatives voting aye were: Anderson, Bell, Byrd, Chiles, Chumney, Clark, Crain, Cross, Davis (Knox), Duer, Gunnels, Haley, Halteman, Harrill, Hassell, Head, Holt, Huskey, Jackson, Jones U (Shelby), Kent, King, Kisber, Knight, Love, McDaniel, McKee, Moore, Napier, Niceley, Odom, Peroulas Draper, Phillips, Pinion, Pruitt, Ridgeway, Robinson (Davidson), Robinson (Hamilton), Robinson (Washington), Shirley, Sipes, Stamps, Tindell, Turner (Hamilton), Venable, Walley, West, Whitson, Winningham, Mr. Speaker Naifeh -- 50.

Representatives voting no were: Allen, Arriola, Bittle, Bivens, Bragg, Callicott, Coffey, Collier, Curlee, Davidson, Davis (Cocke), Davis (Gibson), DeBerry, Ferguson, Fowlkes, Givens, Hargrove, Haun, Herron, Hill, Hillis, Hubbard, Johnson, Joyce, Kernell, Liles,

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McAfee, Meyer, Nuber, Purcell, Rhinehart, Rigsby, Rinks, Tullos, Turner (Shelby), Williams (Shelby), Williams (Union), Windle, Wix, Wood -- 40.

Representatives present and not voting were: Dixon, Holcomb, Severance -- 3.

A motion to reconsider was tabled.

House Bill No. 1057 -- Election Laws -- Requires county election commissions to be notified of primary in writing; clarifies qualifying deadline for certain candidates in certain primaries. Amends TCA 2-13-203.

On motion, House Bill No. 1057 was made to conform with Senate Bill No. 479.

On motion, **Senate Bill No. 479**, on same subject, was substituted for House Bill No. 1057.

Rep. McDaniel moved that **Senate Bill No. 479** be passed on third and final consideration, which motion prevailed by the following vote:

Ayes.	89
Noes.	0
Present and not voting.	3

Representatives voting aye were: Allen, Anderson, Arriola, Bell, Bittle, Bivens, Bragg, Byrd, Callicott, Chiles, Chumney, Clark, Coffey, Collier, Copeland, Crain, Cross, Curlee, Davidson, Davis (Cocke), Davis (Gibson), Davis (Knox), DeBerry, Dixon, Duer, Ferguson, Fowlkes, Givens, Gunnels, Haley, Halteman, Hargrove, Harrill, Hassell, Haun, Head, Herron, Hill, Hillis, Holcomb, Holt, Hubbard, Huskey, Jackson, Johnson, Joyce, Kent, Kernell, Kisber, Knight, Liles, Love, McAfee, McDaniel, McKee, Meyer, Moore, Napier, Niceley, Odom, Peroulas Draper, Phillips, Pinion, Pruitt, Purcell, Rhinehart, Ridgeway, Rigsby, Rinks, Robinson (Davidson), Robinson (Hamilton), Robinson (Washington), Severance, Shirley, Sipes, Stamps, Tindell, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Whitson, Williams (Shelby), Williams (Union), Windle, Winningham, Wix, Wood -- 89.

Representatives present and not voting were: Nuber, Tullos, Mr. Speaker Naifeh -- 3.

A motion to reconsider was tabled.

House Bill No. 1237 -- Boats, Boating -- Requires certain commercial boating facilities to provide facilities for disposal of raw sewage; prohibits discharge of raw sewage under certain circumstances. Amends TCA, Title 69.

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Rep. Hargrove moved that House Bill No. 1237 be reset to the Calendar for Thursday, April 4, 1991, which motion prevailed.

***House Joint Resolution No. 0118 --** General Assembly, Statement of Intent or Position -- Expresses position concerning allocation of any additional funding for indigent health care.

Rep. Pruitt moved that House Joint Resolution No. 118 be adopted, which motion prevailed by the following vote:

Ayes.	92
Noes.	0

Representatives voting aye were: Allen, Anderson, Arriola, Bell, Bittle, Bivens, Bragg, Byrd, Callicott, Chumney, Clark, Coffey, Collier, Copeland, Crain, Cross, Davidson, Davis (Cocke), Davis (Gibson), Davis (Knox), DeBerry, Dixon, Duer, Ferguson, Fowlkes, Givens, Gunnels, Haley, Halteman, Hargrove, Harrill, Hassell, Haun, Head, Herron, Hill, Hillis, Holcomb, Holt, Hubbard, Huskey, Jackson, Johnson, Jones U (Shelby), Joyce, Kent, Kernell, King, Kisber, Knight, Liles, Love, McAfee, McDaniel, McKee, Meyer, Moore, Napier, Niceley, Nuber, Odom, Peroulas Draper, Phillips, Pinion, Pruitt, Purcell, Rhinehart, Ridgeway, Rigsby, Rinks, Robinson (Davidson), Robinson (Hamilton), Robinson (Washington), Severance, Shirley, Sipes, Stamps, Tindell, Tullos, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Whitson, Williams (Shelby), Williams (Union), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 92.

A motion to reconsider was tabled.

***House Joint Resolution No. 0120 --** Memorials, Government Officials -- Directs study regarding additional funding for child abuse prevention.

Rep. Pruitt moved that House Joint Resolution No. 120 be adopted, which motion prevailed by the following vote:

Ayes.	91
Noes.	0

Representatives voting aye were: Allen, Anderson, Arriola, Bell, Bittle, Bivens, Bragg, Byrd, Callicott, Chumney, Clark, Collier, Copeland, Crain, Cross, Curlee, Davidson, Davis (Cocke), Davis (Gibson), Davis (Knox), DeBerry, Dixon, Duer, Ferguson, Fowlkes, Givens, Gunnels, Haley, Halteman, Hargrove, Harrill, Hassell, Haun, Head, Herron, Hill, Hillis, Holcomb, Holt, Hubbard, Huskey, Jackson, Johnson, Jones U (Shelby), Joyce, Kent, Kernell, King, Kisber, Knight, Liles, Love, McAfee, McDaniel, McKee, Meyer, Moore, Napier, Niceley, Nuber, Odom, Peroulas Draper, Phillips, Pinion, Pruitt, Purcell, Rhinehart, Ridgeway, Rigsby, Rinks,

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Robinson (Davidson), Robinson (Hamilton), Robinson (Washington), Severance, Shirley, Sipes, Stamps, Tullos, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Whitson, Williams (Shelby), Williams (Union), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 91.

A motion to reconsider was tabled.

House Bill No. 0840 -- Contractors -- Allows general contractors to place licenses in retirement. Amends TCA, Title 62, Ch. 6.

On motion, House Bill No. 840 was made to conform with Senate Bill No. 543.

On motion, **Senate Bill No. 543**, on same subject, was substituted for House Bill No. 840.

Rep. Head moved that **Senate Bill No. 543** be passed on third and final consideration.

Rep. U. Jones moved to amend as follows:

Amendment No. 1

Amend Senate Bill No. 543 by adding a new subsection to the amendatory language of Section 1:

() In no event may a retired license be renewed for more than seven (7) years dated from the time of initial application.

Rep. U. Jones moved that Amendment No. 1 be withdrawn, which motion prevailed.

Rep. U. Jones moved to amend as follows:

Amendment No. 2

Amend Senate Bill No. 543 by adding new subsections to the amendatory language of Section 1:

() In no event may a retired license be renewed for more than seven (7) years dated from the time of initial application.

() No retired license is transferable.

On motion, Amendment No. 2 was adopted.

Thereupon, Rep. Head moved that **Senate Bill No. 543**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

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Ayes.	93
Noes.	0

Representatives voting aye were: Allen, Anderson, Arriola, Bell, Bittle, Bivens, Bragg, Byrd, Callicott, Chiles, Chumney, Clark, Coffey, Collier, Copeland, Crain, Cross, Curlee, Davidson, Davis (Cocke), Davis (Gibson), Davis (Knox), Dixon, Duer, Ferguson, Fowlkes, Givens, Gunnels, Haley, Halteman, Hargrove, Harrill, Hassell, Haun, Head, Herron, Hill, Hillis, Holcomb, Holt, Hubbard, Huskey, Jackson, Johnson, Jones U (Shelby), Joyce, Kent, Kernell, King, Kisber, Knight, Liles, Love, McAfee, McDaniel, McKee, Meyer, Moore, Napier, Niceley, Nuber, Odom, Peroulas Draper, Phillips, Pinion, Pruitt, Purcell, Rhinehart, Ridgeway, Rigsby, Rinks, Robinson (Davidson), Robinson (Hamilton), Robinson (Washington), Severance, Shirley, Sipes, Stamps, Tindell, Tullos, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Whitson, Williams (Shelby), Williams (Union), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 93.

A motion to reconsider was tabled.

***House Joint Resolution No. 0121** -- General Assembly, Statement of Intent or Position -- Expresses that adequate funding resources be provided to assist and encourage indigent families working to improve economic independence and quality of life.

Rep. Pruitt moved that House Joint Resolution No. 121 be adopted, which motion prevailed by the following vote:

Ayes.	92
Noes.	0

Representatives voting aye were: Allen, Anderson, Arriola, Bell, Bittle, Bivens, Bragg, Byrd, Callicott, Chumney, Clark, Coffey, Collier, Copeland, Crain, Cross, Curlee, Davidson, Davis (Cocke), Davis (Gibson), Davis (Knox), DeBerry, Dixon, Duer, Ferguson, Fowlkes, Givens, Gunnels, Haley, Halteman, Hargrove, Hassell, Haun, Head, Herron, Hill, Hillis, Holcomb, Holt, Hubbard, Huskey, Jackson, Johnson, Jones U (Shelby), Joyce, Kent, Kernell, King, Kisber, Knight, Liles, Love, McAfee, McDaniel, McKee, Meyer, Moore, Napier, Niceley, Nuber, Odom, Peroulas Draper, Phillips, Pinion, Pruitt, Purcell, Rhinehart, Ridgeway, Rigsby, Rinks, Robinson (Davidson), Robinson (Hamilton), Robinson (Washington), Severance, Shirley, Sipes, Stamps, Tindell, Tullos, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Whitson, Williams (Shelby), Williams (Union), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 92.

A motion to reconsider was tabled.

House Bill No. 1539 -- Shelbyville -- Enacts hotel/motel tax.

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Rep. Phillips moved that House Bill No. 1539 be passed on third and final consideration.

Rep. Phillips moved to amend as follows:

Amendment No. 1

Amend House Bill No. 1539 by deleting Section 3 in its entirety, and by substituting instead the following language:

SECTION 3. The proceeds received by the city from the tax shall be retained by the city and deposited into a special fund for tourism and economic development. No monies shall be expended from such fund except as provided in this section. Any unencumbered funds and any unexpended balance of this fund remaining at the end of any fiscal year shall not revert to the general fund, but shall be carried forward until expended in accordance with the provisions herein. Interest accruing on investments and deposits of the fund shall be returned to the fund and remain a part of the fund.

The city council shall appropriate all funds deposited in the special fund to the Shelbyville/Bedford County Chamber of Commerce upon request from the Chamber of Commerce for the purposes provided herein. The Chamber of Commerce shall submit an annual report to the city describing the manner in which such appropriated funds have been expended for tourism and economic development. The form and filing date of the report shall be as provided by resolution of the city council.

On motion, Amendment No. 1 was adopted.

Thereupon, Rep. Phillips moved that House Bill No. 1539, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes.	92
Noes.	0

Representatives voting aye were: Allen, Anderson, Arriola, Bell, Bittle, Bivens, Bragg, Byrd, Callicott, Chiles, Chumney, Clark, Coffey, Collier, Copeland, Crain, Cross, Curlee, Davidson, Davis (Cocke), Davis (Gibson), Davis (Knox), DeBerry, Dixon, Duer, Ferguson, Fowlkes, Givens, Haley, Halteman, Hargrove, Harrill, Hassell, Haun, Head, Herron, Hill, Hillis, Holcomb, Holt, Hubbard, Huskey, Jackson, Johnson, Jones U (Shelby), Joyce, Kent, Kernell, King, Kisber, Knight, Liles, Love, McAfee, McDaniel, McKee, Meyer, Moore, Napier, Niceley, Nuber, Odom, Peroulas Draper, Phillips, Pinion, Pruitt, Purcell, Rhinehart, Ridgeway, Rinks, Robinson (Davidson), Robinson (Hamilton), Robinson (Washington), Severance, Shirley, Sipes, Stamps, Tindell, Tullos, Turner (Hamilton), Turner

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(Shelby), Venable, Walley, West, Whitson, Williams (Shelby), Williams (Union), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 92.

A motion to reconsider was tabled.

House Bill No. 1545 -- Bedford County -- Authorizes joint levy of hotel/motel tax in Shelbyville and Bedford County.

Rep. Phillips moved that House Bill No. 1545 be passed on third and final consideration, which motion prevailed by the following vote:

Ayes.	91
Noes.	0

Representatives voting aye were: Allen, Anderson, Arriola, Bell, Bittle, Bivens, Byrd, Callicott, Chiles, Chumney, Clark, Coffey, Collier, Copeland, Crain, Cross, Curlee, Davidson, Davis (Cocke), Davis (Gibson), Davis (Knox), DeBerry, Dixon, Duer, Ferguson, Fowlkes, Givens, Gunnels, Haley, Halteman, Hargrove, Harrill, Hassell, Haun, Head, Herron, Hill, Hillis, Holcomb, Holt, Hubbard, Huskey, Jackson, Johnson, Jones U (Shelby), Joyce, Kent, Kernell, King, Kisber, Knight, Liles, Love, McAfee, McDaniel, McKee, Meyer, Moore, Napier, Niceley, Nuber, Odom, Peroulas Draper, Phillips, Pinion, Pruitt, Rhinehart, Ridgeway, Rinks, Robinson (Davidson), Robinson (Hamilton), Robinson (Washington), Severance, Shirley, Sipes, Stamps, Tindell, Tullos, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Whitson, Williams (Shelby), Williams (Union), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 91.

A motion to reconsider was tabled.

House Bill No. 0772 -- Taxes -- Repeals Beneficial Use Tax Act of 1990. Repeals TCA, Title 67, Ch. 4, Pt. 15.

Further consideration of House Bill No. 772, previously considered on March 27, 1991, at which time it was reset to the Calendar for April 1, 1991.

Rep. Kisber moved that House Bill No. 772 be reset to the Calendar for Thursday, April 4, 1991, which motion prevailed.

MESSAGE CALENDAR

MOTION TO RECONSIDER

Rep. King moved to lift from the table the motion to reconsider Senate Bill No. 347, which motion prevailed.

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***Senate Bill No. 0347** -- Sunset Laws -- Extends termination date of public livestock market board. Amends TCA, Title 4, Ch. 29; Title 44, Ch. 12.

Rep. King moved to reconsider action in passing Senate Bill No. 347, to which Rep. McAfee objected.

Thereupon, Rep. King withdrew his motions and moved instead that Senate Bill No. 347 be reset to the Message Calendar for two weeks, to April 15, 1991, which motion prevailed.

HOUSE ACTION ON SENATE AMENDMENTS

***House Bill No. 0576** -- Professions and Occupations -- Revises requirements for marital and family therapists. Amends TCA, Title 63, Ch. 22, Pt. 1.

Senate Amendment No. 2

Amend House Bill No. 576 by adding to the third sentence of the amendatory language of Section 7 after the words "as marital and family therapists" the words "may maintain certification or".

Senate Amendment No. 3

Amend House Bill No. 576 by inserting in the amendatory language of Section 11, at the end of paragraph (1) and of paragraph (2) immediately preceding their respective semi-colons the following:

where the applicant does not meet the standards herein

Rep. Holcomb moved that the House concur in Senate Amendment(s) No(s). 2 and 3 to **House Bill No. 576**, which motion prevailed by the following vote:

Ayes.	92
Noes.	0
Present and not voting.	1

Representatives voting aye were: Allen, Anderson, Arriola, Bell, Bittle, Bivens, Bragg, Byrd, Callicott, Chiles, Chumney, Clark, Coffey, Collier, Copeland, Crain, Cross, Curlee, Davidson, Davis (Cocke), Davis (Gibson), Davis (Knox), DeBerry, Dixon, Duer, Ferguson, Fowlkes, Givens, Gunnels, Haley, Halteman, Hargrove, Harrill, Hassell, Haun, Head, Herron, Hill, Hillis, Holt, Hubbard, Huskey, Jackson, Johnson, Jones U (Shelby), Joyce, Kent, Kernell, King, Kisber, Knight, Liles, Love, McDaniel, McKee, Meyer, Moore, Napier, Niceley, Nuber, Odom, Peroulas Draper, Phillips, Pinion, Pruitt, Purcell, Rhinehart, Ridgeway, Rigsby, Rinks, Robinson (Davidson), Robinson (Hamilton), Robinson (Washington), Severance, Shirley, Sipes, Stamps, Tindell, Tullos, Turner (Hamilton), Turner

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(Shelby), Venable, Walley, West, Whitson, Williams (Shelby), Williams (Union), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 92.

Representatives present and not voting were: Holcomb -- 1.

A motion to reconsider was tabled.

MOTION TO RECONSIDER

Rep. West moved to lift from the table the motion to reconsider Senate Bill No. 903, which motion prevailed.

Senate Bill No. 0903 -- Election Laws -- Increases time in Davidson County to appoint poll officials. Amends TCA 2-4-102.

Rep. West moved to reconsider action in passing Senate Bill No. 903, which motion prevailed.

On motion, the House reconsidered its action in adopting Amendment No. 1. On motion, Amendment No. 1 was withdrawn.

Rep. West moved that **Senate Bill No. 903** be passed on third and final consideration, which motion prevailed by the following vote:

Ayes.	94
Noes.	0

Representatives voting aye were: Allen, Anderson, Arriola, Bell, Bittle, Bivens, Bragg, Byrd, Callicott, Chiles, Chumney, Clark, Coffey, Collier, Copeland, Crain, Cross, Curlee, Davidson, Davis (Cocke), Davis (Gibson), Davis (Knox), DeBerry, Dixon, Duer, Ferguson, Fowlkes, Givens, Gunnels, Haley, Halteman, Hargrove, Harrill, Hassell, Haun, Head, Herron, Hill, Hillis, Holcomb, Holt, Hubbard, Huskey, Jackson, Johnson, Jones U (Shelby), Joyce, Kent, Kernell, King, Kisber, Knight, Liles, Love, McAfee, McDaniel, McKee, Meyer, Moore, Napier, Niceley, Nuber, Odom, Peroulas, Draper, Phillips, Pinion, Pruitt, Purcell, Rhinehart, Ridgeway, Rigsby, Rinks, Robinson (Davidson), Robinson (Hamilton), Robinson (Washington), Severance, Shirley, Sipes, Stamps, Tindell, Tullos, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Whitson, Williams (Shelby), Williams (Union), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 94.

A motion to reconsider was tabled.

UNFINISHED BUSINESS

RULES SUSPENDED

Rep. Phillips moved to suspend **Rule No. 71** (amendment distribution rule) so that all amendments for Wednesday's Calendar,

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placed on the member's desks on Wednesday, will be considered timely placed.

RULES SUSPENDED

Rep. Phillips moved to suspend **Rule No. 49** (the 48-hour rule), so that Calendar and Rules may place additional bills on Wednesday's floor calendar, which motion prevailed.

BILLS WITHDRAWN

On motion of Rep. Anderson, House Bill No. 455 was recalled from the Conservation and Environment Committee.

On motion of Rep. Anderson, **House Bill No. 455** was withdrawn from the House.

NOTICE TO ACT ON SENATE MESSAGES

Pursuant to **Rule No. 59**, the sponsor(s) gave notice of intent to consider the following measure(s) from the Senate on Wednesday, April 3, 1991:

House Bill No. 738: Rep. Chiles.

SPONSORS ADDED

Without objection, the rules were suspended to allow the following members to add their names as sponsors as indicated below, the prime sponsor of each having agreed to such addition:

House Bill No. 460: Rep(s). Dixon and King as prime sponsor(s).

House Bill No. 765: Rep(s). Tullos as prime sponsor(s).

House Bill No. 1057: Rep(s). Sipes as prime sponsor(s).

House Bill No. 1219: Rep(s). Turner (Hamilton) as sponsor(s).

House Bill No. 1221: Rep(s). DeBerry and Meyer as prime sponsor(s).

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House Bill No. 1278: Rep(s). Windle as prime sponsor(s).

House Bill No. 1328: Rep(s). Walley as prime sponsor(s).

House Bill No. 1477: Rep(s). Anderson as prime sponsor(s).

House Bill No. 1487: Rep(s). Turner (Hamilton) as sponsor(s).

INTRODUCTION OF RESOLUTIONS

On motion, the resolution(s) listed was/were introduced and referred as noted:

House Resolution No. 0033 -- Memorials, Personal Achievement -- Miss Hannah MaKenzie Tomkins, Miss American Cosmopolitan USA High Point Queen. by *Windle.

Referred by the Speaker to the Calendar and Rules Committee.

House Resolution No. 0034 -- Memorials, Personal Occasion -- Ernest Heidle. by *Windle.

Referred by the Speaker to the Calendar and Rules Committee.

House Resolution No. 0035 -- Memorials, Personal Occasion -- Mr. and Mrs. Ruble C. Price, fiftieth wedding anniversary. by *Windle.

Referred by the Speaker to the Calendar and Rules Committee.

House Joint Resolution No. 0177 -- Highway Signs -- J. Herman Johnston Bridge, Mecca Pike Railroad Bridge in Etowah.

Referred by the Speaker to the Transportation Committee.

House Joint Resolution No. 0179 -- Memorials, Heroism -- Edward G. Klein. by *Shirley.

Referred by the Speaker to the Calendar and Rules Committee.

House Joint Resolution No. 0180 -- Memorials, Retirement -- Claude Tomlinson. by *Severance, *Hill, *Peroulas Draper, *Tindell, *Davis J K, *Bittle, *Armstrong.

Referred by the Speaker to the Calendar and Rules Committee.

House Joint Resolution No. 0181 -- Memorials, Sports -- Harpeth High School girls' basketball team. by *Head, *Davidson.

Referred by the Speaker to the Calendar and Rules Committee.

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House Joint Resolution No. 0182 -- Memorials, Sports -- Amy Brown, Class AA "Miss Basketball". by *Windle.

Referred by the Speaker to the Calendar and Rules Committee.

House Joint Resolution No. 0183 -- Memorials, Sports -- Livingston Academy girls' basketball team. by *Windle.

Referred by the Speaker to the Calendar and Rules Committee.

House Joint Resolution No. 0184 -- Memorials, Sports -- Clarkrange High School girls' basketball team, Class A state champions. by *Windle.

Referred by the Speaker to the Calendar and Rules Committee.

**SENATE JOINT RESOLUTIONS
(Congratulatory and Memorializing)**

On motion, the resolutions listed were referred as noted:

Senate Joint Resolution No. 0147 -- Memorials, Public Service -- Dan W. Spence.

Referred by the Speaker to the Calendar and Rules Committee.

Senate Joint Resolution No. 0148 -- Memorials, Public Service -- Linda Dell Bailey Bussart, Teacher.

Referred by the Speaker to the Calendar and Rules Committee.

Senate Joint Resolution No. 0149 -- Memorials, Public Service -- Minnie Pearl Jurnett.

Referred by the Speaker to the Calendar and Rules Committee.

RESOLUTIONS LYING OVER

On motion, the resolutions(s) listed was/were referred as noted:

Senate Joint Resolution No. 0152 -- Naming and Designating -- "Buy America" Month, July 1991.

Referred by the Speaker to the Consumer and Employee Affairs Committee.

Senate Joint Resolution No. 0153 -- Naming and Designating -- "Vietnam Veterans Week," November 11-17, 1991.

Referred by the Speaker to the State and Local Government Committee.

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***Senate Joint Resolution No. 0154** -- Naming and Designating -- "Police Memorial Week," May 12-18, 1991.

Referred by the Speaker to the State and Local Government Committee.

INTRODUCTION OF BILLS

On motion, the following bills were introduced and passed first consideration:

***House Bill No. 1524** -- Appropriations -- Authorizes growth in state appropriations which exceed rate of growth of economy for the 1991-1992 fiscal year. Amends TCA, Title 9, Ch. 6, Pt. 2. by *Purcell, *Naifeh, *DeBerry, *Bragg.

Passed first consideration.

House Bill No. 1536 -- Hospitals and Health Care Facilities -- Excludes hospitals from obtaining certificate of need and major medical purchase requirement. Amends TCA 68-11-102. by *Davis J K.

Passed first consideration.

House Bill No. 1544 -- Metropolitan Government -- Authorizes Nashville-Davidson County to have metropolitan hospital authority. Amends TCA, Title 7, Ch. 57. by *Love.

Passed first consideration.

House Bill No. 1564 -- Smithville -- Provides for popular election of judge of city court. Amends Chapter 486, Private Acts of 1941, as amended. by *Buck.

Passed first consideration.

SENATE BILLS TRANSMITTED

On motion, the Senate Bills listed below, transmitted to the House, were held on the Clerk's desk as noted:

***Senate Bill No. 0514** -- Public Funds and Financing -- Expands reporting requirements for qualified public depositories. Amends TCA, Title 9, Ch. 4, Pt. 5. (HB 0337).

Held pending third consideration of companion House Bill.

***Senate Bill No. 0629** -- County Government -- Enacts "Charter Government Unification Act". Amends TCA, Title 7. (HB 1161).

Held pending third consideration of companion House Bill.

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***Senate Bill No. 0989** -- Sunset Laws -- Extends termination date of public health council. Amends TCA, Title 4, Ch. 29; Title 68, Ch. 1. (HB 0910).

Held pending third consideration of companion House Bill.

***Senate Bill No. 1021** -- Election Laws -- Requires notice of office sought on qualifying petition. Amends TCA, Title 2. (HB 0821).

Held pending third consideration of companion House Bill.

***Senate Bill No. 1203** -- Correctional Programs -- Provides for community based alternatives to incarceration and probation eligibility. Amends TCA 40-35-303, 40-36-106. (HB 1082).

Held pending third consideration of companion House Bill.

***Senate Bill No. 1273** -- Utilities, Utility Districts -- Authorizes NES board to set fees to be charged for providing copies of computer generated maps to public. Amends TCA, Title 7, Ch. 52. (HB 1288).

Held pending third consideration of companion House Bill.

***Senate Bill No. 1295** -- Hospitals and Health Care Facilities -- Creates exemption from CON process for replacement hospital facility. Amends TCA, Title 68, Ch. 11. (HB 1490).

Held pending third consideration of companion House Bill.

Senate Bill No. 1314 -- Correctional Programs -- Authorizes commissioner to use inmate labor to construct prison facilities. Amends TCA, Title 41. (*HB 1025).

Held pending third consideration of companion House Bill.

***Senate Bill No. 1373** -- Taxes, Amusement -- Authorizes imposition of local amusement tax in Knoxville and Knox County. Repeals Chapter 776, Private Acts of 1947. (HB 1409).

Held pending third consideration of companion House Bill.

Senate Bill No. 1418 -- Taxes, Gasoline, Petroleum Products -- Penalizes late filing of documentation of petroleum products shipped outside state by reducing tax credit by 5 percent increments for each month past filing deadline. Amends TCA 67-3-910. (*HB 0763).

Held pending third consideration of companion House Bill.

***Senate Bill No. 1465** -- Metropolitan Government -- Authorizes certain legislative bodies to establish fees to be charged for provision of computer generated maps. Amends TCA, Title 10, Ch. 7. (HB 1460).

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Held pending third consideration of companion House Bill.

Senate Bill No. 1471 -- Aircraft and Airports -- Authorizes metropolitan governments to establish airport noise mitigation programs. Amends TCA, Title 7, Ch. 13. (*HB 1459).

Held pending third consideration of companion House Bill.

***Senate Bill No. 1521** -- Eminent Domain -- Authorizes acquisition of certain properties by condemnation or eminent domain for certain preservation purposes in Scott and Campbell counties. Amends TCA 11-14-401, 407. (HB 1517).

Held pending third consideration of companion House Bill.

HOUSE BILLS ON SECOND CONSIDERATION

On motion, bills listed below passed second consideration and were referred to committee or held on the Clerk's desk as noted:

House Bill No. 1560 -- Franklin -- Passed second consideration and held on Clerk's desk pending approval by local delegation.

House Bill No. 1561 -- Carroll County -- Passed second consideration and held on Clerk's desk pending approval by local delegation.

House Bill No. 1562 -- Rossville -- Passed second consideration and held on Clerk's desk pending approval by local delegation.

**REPORT OF COMMITTEE ON CALENDAR AND RULES
CONSENT CALENDAR
April 1, 1991**

MR. SPEAKER: The officers of your Calendar and Rules Committee report that we have set the following bill(s) and/or resolution(s) on the **Consent Calendar** for **Wednesday, April 3, 1991**: House Resolution(s) No(s). 33, 34 and 35; House Joint Resolution(s) No(s). 179, 180, 181, 182, 183 and 184; also, Senate Joint Resolution(s) No(s). 147, 148 and 149.

PHILLIPS, Chair.

**ENGROSSED BILLS
April 1, 1991**

MR. SPEAKER: Your Chief Engrossing Clerk begs leave to report that we have carefully examined House Bill(s) No(s). 6, 483, 1554, 1555 and 1556; also, House Joint Resolution(s) No(s). 110 and 178;

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and find same correctly engrossed and ready for transmission to the Senate.

BETTY KAY FRANCIS,
Chief Engrossing Clerk.

ENGROSSED BILLS
April 1, 1991

MR. SPEAKER: Your Chief Engrossing Clerk begs leave to report that we have carefully examined House Bill(s) No(s). 689; and find same correctly engrossed and ready for transmission to the Senate.

BETTY KAY FRANCIS,
Chief Engrossing Clerk.

MESSAGE FROM THE SENATE
April 1, 1991

MR. SPEAKER: I am directed to return to the House, Senate Bill No. 1026.

The Senate concurred in House Amendment(s) No(s). 2 and 4, and nonconcurred in House Amendment(s) No(s). 3 and 5.

CLYDE W. McCULLOUGH, JR.,
Chief Clerk.

MESSAGE FROM THE SENATE
April 1, 1991

MR. SPEAKER: I am directed to return to the House, House Joint Resolution(s) No(s). 38, 158, 161, 162 and 164; concurred in by the Senate.

CLYDE W. McCULLOUGH, JR.,
Chief Clerk.

MESSAGE FROM THE SENATE
April 1, 1991

MR. SPEAKER: I am directed to return to the House, House Bill(s) No(s). 268, 327, 328, 369, 549, 689 and 1267; substituted for Senate Bill(s) on the same subject(s) and passed by the Senate.

CLYDE W. McCULLOUGH, JR.,
Chief Clerk.

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MESSAGE FROM THE SENATE

April 1, 1991

MR. SPEAKER: I am directed to return to the House, House Bill(s) No(s). 263, 409, 779, 1532, 1533, 1538 and 1543; also, House Joint Resolution(s) No(s). 98, 147, 150, 151, 152, 153, 154, 155, 156 and 169; signed by the Speaker.

CLYDE W. McCULLOUGH, JR.,
Chief Clerk.

MESSAGE FROM THE SENATE

April 1, 1991

MR. SPEAKER: I am directed to transmit to the House, Senate Bill(s) No(s). 359, 360, 447, 472 and 1397; also, Senate Joint Resolution(s) No(s). 137, 138, 139, 140, 141, 142, 146 and 158; for the signature of the Speaker.

CLYDE W. McCULLOUGH, JR.,
Chief Clerk.

ENGROSSED BILLS

April 1, 1991

MR. SPEAKER: Your Chief Engrossing Clerk begs leave to report that we have carefully examined House Bill(s) No(s). 486, 838, 1334, 1539 and 1545; also, House Joint Resolution(s) No(s). 118, 120 and 121; and find same correctly engrossed and ready for transmission to the Senate.

BETTY KAY FRANCIS,
Chief Engrossing Clerk.

ROLL CALL

The roll call was taken with the following results:

Present 94

Representatives present were: Allen, Anderson, Arriola, Bell, Bittle, Bivens, Bragg, Byrd, Callicott, Chiles, Chumney, Clark, Coffey, Collier, Copeland, Crain, Cross, Curlee, Davidson, Davis (Cocke), Davis (Gibson), Davis (Knox), DeBerry, Dixon, Duer, Ferguson, Fowlkes, Givens, Gunnels, Haley, Halteman, Hargrove, Harrill, Hassell, Haun, Head, Herron, Hill, Hillis, Holcomb, Holt, Hubbard, Huskey, Jackson, Johnson, Jones U (Shelby), Joyce, Kent, Kernell, King, Kisber, Knight, Liles, Love, McAfee, McDaniel, McKee, Meyer, Moore, Napier, Niceley, Nuber, Odom, Peroulas Draper, Phillips, Pinion, Pruitt, Purcell, Rhinehart, Ridgeway, Rigsby, Rinks, Robinson (Davidson), Robinson (Hamilton), Robinson (Washington), Severance, Shirley, Sipes, Stamps, Tindell, Tullios,

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Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Whitson, Williams (Shelby), Williams (Union), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 94.

On motion of Rep. Purcell, the House recessed until 2:00 p.m., Wednesday, April 3, 1991.